Joint Legislative Audit Committee

Office of the Auditor General

REPORT TO THE CALIFORNIA LEGISLATURE

A STUDY OF THE ADMINISTRATIVE FEASIBILITY OF A LOCAL GASOLINE TAX

Office of the Auditor General

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REPORT 301

REPORT OF THE

OFFICE OF THE AUDITOR GENERAL

TO THE

JOINT LEGISLATIVE AUDIT COMMITTEE

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A STUDY OF THE ADMINISTRATIVE FEASIBILITY OF A LOCAL GASOLINE TAX

MARCH 1977

Joint Legislative Audit Committee
OFFICE OF THE AUDITOR GENERAL
California Legislature

MIKE CULLEN
CHAIRMAN

March 7, 1977

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of
the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's study of the administrative feasibility of the imposition of an additional tax on gasoline by local governments. The report concludes that the system is feasible and, if favored by the Legislature and implemented by local government, would generate about $210 million in local revenue.

The auditors are Harold L. Turner, Manager; Richard V. Alexander and Richard C. Mahan.

Respectfully submitted,

MIKE CULLEN, Chairman
Joint Legislative Audit Committee

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EXHIBITS

SUMMARY

In response to a resolution of the Joint Legislative Audit Committee, we studied the administrative feasibility and cost of allowing local governments to impose a gasoline tax. This study was conducted by the Office of the Auditor General with consultation provided by the Legislative Analyst.

We researched local fuel taxes in other states (see Appendix A) and corollary tax systems in California. Additionally, administrative cost estimates were developed based on eight sets of assumptions (see page 23).

We identified four primary administrative issues: (1) who collects the tax, (2) who administers the tax program, (3) what tax rate is allowable, and (4) what level of government imposes the tax. Each issue has multiple alternatives. In order to evaluate each alternative, we established evaluative criteria (see page 20).

There are many feasible methods of administering a local-option gasoline tax system. Based on our analysis, we recommend that distributors and local brokers collect local gasoline taxes, maintain necessary records, and make all periodic reports and tax payments. Collection at this level minimizes the taxpaying population and offers opportunities to utilize existing reporting and management information systems.

The local gasoline tax should be administered by the State. State administration centralizes functions, promotes uniformity of administrative requirements, and utilizes existing administrative systems.

Two types of tax rates are feasible: (1) varying tax rate--local governments select the tax rate up to a state-specified maximum, and (2) fixed tax rate--the State specifies a rate per gallon by statute.

The selection of the type of tax rate depends upon whether cities in addition to counties are authorized to levy the local tax. If local gasoline taxes are limited to counties only, the State should authorize a varying tax rate. If a city and county system is authorized, a fixed tax rate should be stipulated by the enabling legislation. City participation in a local gasoline tax system compounds the administrative problems and costs. If cities participate, these problems and costs can be minimized by requiring a fixed tax rate.

The decision to either allow both cities and counties to adopt local gasoline tax ordinances or limit the tax to only counties is a policy decision for the Legislature. Therefore, we chose to offer recommendations based on both assumptions.

Detailed information on our analysis and recommendations is provided in this report.

INTRODUCTION

Through state enabling legislation, a local-option gasoline tax system (imposed by cities and counties) could be established in California. Based on 1975-76 gasoline consumption, a two-cent local gas tax statewide would generate about $210 million in local revenue. Local gasoline tax revenues could be used for (1) the planning, construction, and maintenance of roads, streets, and highways, and (2) the development of transit systems.

A recent Legislative Counsel Opinion (see Exhibit IV) indicates that local gasoline tax revenues could also be used for any other purposes that cities and counties deem appropriate. In addition, the Legislative Counsel indicates that chartered and general law cities could adopt local gasoline tax ordinances even without state enabling legislation.

The objectives of this study were to (1) identify and analyze the major local gasoline tax issues, (2) identify the alternatives available along with their associated advantages and disadvantages, (3) develop criteria to evaluate each alternative, and (4) recommend the most feasible taxation methods.

BACKGROUND

The Motor Vehicle Fuel License Tax Law imposes a license tax--hereafter referred to as the state gasoline tax--on distributors of motor vehicle fuel.*

The state gasoline tax was initially imposed in 1923 at a rate of two cents per gallon. Over the years, the tax rate gradually increased until 1963 when it reached its current level of seven cents per gallon. The state gasoline tax is levied against gasoline distributors and is passed on to the consumer through the retail sales outlets. About 125 licensed distributors make monthly reports and tax payments to the State Board of Equalization.

The state gasoline tax revenue supports California's state highways, county roads and major streets. In fiscal year 1975-76, about $737 million in gasoline taxes was collected. About 0.05 percent of these revenues was used to absorb administrative expenses. The net revenue was distributed according to a legislated formula. Generally, about 23 percent of the net revenue is allocated to counties, 25 percent to cities, and 52 percent to the state highway account.

Local tax dollars also support the maintenance and construction of county roads and city streets. In fiscal year 1974-75, funds available to the 58 counties in California for road maintenance and

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*Motor vehicle fuel is defined as gasoline or any other type of inflammable liquid, excluding kerosene and liquified petroleum gas, which is or can be used to propel a motor vehicle.

construction totaled $352 million. Twenty-nine percent ($101 million) of these funds came from local revenue sources such as property taxes, traffic fines, etc. During the same period, 410 cities in California had $547 million available for streets--64 percent ($348 million) of these funds was derived from local sources. Overall, nearly 50 percent ($448 million out of a total of $899 million) of city and county monies available for streets and roads came from sources other than the State and Federal Governments. (See Appendix D for a detailed analysis of city and county funding.)

Most other states also impose a state gasoline tax for the purpose of funding road and highway construction and maintenance programs. Additionally, five states--New York, Hawaii, Mississippi, Virginia, and Alabama--allow local governments (either counties, cities, or both) to impose local fuel taxes. Appendix A summarizes each state's local fuel tax system.

Gasoline taxes would not be the first local application of a tax traditionally imposed by the State. The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties to enact ordinances imposing sales and use taxes. The law was enacted in 1955 to (1) provide additional revenue to local government, (2) eliminate the subjection of retailers to multiple local taxes, and (3) simplify the problem of administering such taxes. The state enabling law stipulated that local sales and use tax ordinances must contain provisions identical to those in the California Sales and Use Tax law. These provisions addressed subjects such as state administration of the tax, amendments to ordinances, and tax credits where cities adopt local sales and use tax ordinances.

STUDY RESULTS

A local-option gasoline tax system in California is administratively feasible. Alabama and Hawaii have successfully implemented local fuel tax systems and other states have authorized them. Our research of those systems as well as other data reveals that many factors influence the administrative feasibility of a local gasoline tax system. There are four major administrative issues upon which successful imposition of the tax is dependent. They are:

Collection: Who collects the tax. The entities selected would have responsibility for collecting the tax and making monthly reports and payments to the administering authority(s).

Administration: Who administers the tax program. The entity(s) selected would be responsible for maintaining records, disbursing funds, enforcing the program, auditing taxpayers, and managing all other administrative functions.

Tax Rate: How much and what type of rate is allowed.

Participation: The level of government authorized to adopt a local gasoline tax.

Each administrative issue has two alternatives which have legal precedent and are administratively feasible; however, each has different benefits and costs--both budgetary and nonbudgetary. The alternatives and items for consideration are described on the following pages.

COLLECTION

Alternative A--Retailer

The local gasoline tax would be imposed and collected at the point of retail sale. The retailer would be responsible for maintaining records of gasoline sold (gallons) and local tax collected. Reports and payments would be made monthly either as part of the sales tax report or through a separate report.

Items for Consideration

Collecting a local gas tax at the retail level creates a taxpaying population of about 21,500. Problems associated with this high number of taxpayers include a higher delinquency rate, a greater number of inaccurate reports, and increased responsibility and cost of reviewing tax returns.

According to the State Board of Equalization, a higher delinquency rate and a greater number of inaccurate tax reports are generally experienced in collecting taxes from the retailer. The high number of taxpayers also complicates other administrative functions.

The review and monitoring of tax returns are labor intensive and therefore the source of a significant portion of the administrative costs. Administrative cost estimates developed by the Board of Equalization indicate that the cost to review tax returns submitted by retailers would range from $84,886 to $125,267 annually.*

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*The exact cost would be dependent on the type of tax rate and level of government participation.

If the State administers a local gasoline tax system, the existing sales tax form could be used as the reporting and payment vehicle. The licensing of taxpayers and coding of necessary information has already been accomplished for sales tax purposes. The sales tax reporting system is automated and coded for city, county, and type of business (gasoline retailer). Additionally, the form already requires information on gallons of gasoline sold.

However, according to Board of Equalization officials, the sales tax reporting form is overcrowded and requires either total redesign or a second page. As a result, the Board of Equalization recommends a new form be created if the tax is to be collected from the retailer. Either reporting method would necessitate a comprehensive program to reeducate retailers in the preparation of the return.

Retailers' ability to either initiate or terminate the sale of gasoline without the administering authority's direct knowledge is another problem associated with collecting the tax from retailers. Since retailers are classified based on their major class of item for sale (i.e., food, jewelry, apparel, etc.), small markets and food stores could sell gasoline without the Board of Equalization's knowledge. Furthermore, the Board states that their information on total gasoline retailers is not current. The high turnover of retail gasoline stations compounds this problem.

Alternative B--Distributor/Local Broker

The local gasoline tax would be imposed at the point of delivery to the retailer and collected from the approximately 525 wholesale distributors and local brokers of gasoline. Each distributor/broker would make monthly reports and payments. The distributors and brokers would assume responsibility for maintaining records reflecting the gallons of gasoline distributed monthly.

Items for Consideration

The 125 major distributors and the 400 local brokers of gasoline are currently licensed by the State Board of Equalization. The 125 distributors--seven of which distribute about 73 percent of all gasoline--currently collect the state gasoline tax and make monthly reports to the Board. The other 400 local brokers are licensed by the Board for other purposes. Initial contacts with a sample of these brokers indicate that many are subsidiaries of other brokers. Additionally, a number of these brokers do not even distribute gasoline. Of the 22 brokers we contacted, nine are subsidiaries of other brokers and three do not distribute gasoline at all. Consequently, the total number of brokers participating in the local tax program will be less than the number licensed; accordingly, the administrative burden and cost may be reduced.

Collection of local gasoline taxes at the distributor/broker level would require these firms to maintain data on location of sales, gallons sold, and tax rate for the jurisdiction in which deliveries are made. Currently, state regulations require the 125 distributors to maintain sales

and distribution records as well as inventory and stock records. Local brokers, on the other hand, must record date of sale, buyer's name, commodity sold, invoice number, gallons of gasoline purchased, method of transportation, and car or ticket number of each delivery.

Officials at the larger distributors we contacted said that generating sales data required under a local gasoline tax system would present no special administrative problems but costs would increase. Many of these distributors have computerized data systems and currently maintain gasoline customer sales data for purposes of state tax reporting requirements and general management information.

While smaller distributors and local brokers comply with the recordkeeping requirements discussed above, few maintain the data on computer or in a form necessary for a local tax system. Discussions with 33 brokers and dealers indicate that additional records reflecting customer sales by location would have to be developed.

Collection of local gasoline taxes from the distributor/broker would place an additional administrative burden and cost on those firms. While not quantifiable, any additional recordkeeping and/or reporting requirement will increase the operating cost of distributors and brokers. If local governments administer their own tax systems, the impact of reporting requirements would be greater. The significance of the burden may be dependent upon the size and nature of the distributors and brokers' operations and the number of cities and counties they serve. In Alabama,

distributors and brokers selling more than one million gallons of gasoline per month usually have computerized operations. The Director of the Alabama Petroleum Council stated that recordkeeping for local gas taxes does not impact severely on these firms. Conversely, local brokers in Alabama selling smaller amounts of gasoline and/or handling fewer customers usually maintain all records manually. One broker estimated that local gas taxes create an additional twelve hours of clerical work per week on his operation.

ADMINISTRATION

Alternative A--State Administration

> A county and/or city adopting a local gasoline tax ordinance would be required to contract with the Board of Equalization to perform all functions incident to the administration of the local gasoline tax. These functions would include collection, disbursement, compliance, and audit, as well as other operations. The cost of administration would be shared by all participating local governments.

Items for Consideration

Whether the tax is imposed on the retailer or the distributor/broker, the State Board of Equalization has existing administrative structures--the state sales tax and state gasoline tax systems--which could be utilized in administering a local gasoline tax. Both existing tax systems already include the basic administrative functions--collection, record maintenance, revenue disbursement, compliance, and auditing capability.

The Board of Equalization receives reports and payments from about 125 gasoline distributors (gas tax) and 560,000 retail businesses (sales tax). Coded accounts are maintained for each distributor and retailer. In both cases, tax monies collected are transferred to the State Controller who disburses the funds as provided by law. Due to the smaller number of accounts, the gasoline tax system is maintained manually while the sales tax system is automated.

As part of the gasoline and sales tax systems, the Board of Equalization has active audit and enforcement programs. In fiscal year 1975-76, the Board audited 98 gasoline distributors and brokers and 25,146 retail businesses. In addition, the Board employs 269 tax representatives for purposes of handling delinquent sales tax accounts. In fiscal year 1975-76, the Board handled 188,708 delinquent retail accounts and 173 delinquent gasoline tax accounts. While these existing resources may be inadequate to perform all audit and enforcement responsibilities associated with a local gasoline tax, opportunities to utilize these systems and their resources would exist if the State administered the tax.

State administration of a local-option gas tax would also minimize the administrative burden placed upon the retailers or distributors and brokers. Under state administration, existing systems would be utilized and the number of reports required on the part of the gasoline distributor or retailer would be reduced. Conversely, in Alabama, where fuel taxes are administered locally, distributors and brokers may send as few as 3 or as many as 100 individual reports and tax payments depending

on the number of taxing jurisdictions to which they distribute. According to the Director of the Alabama Petroleum Council, state administration of a local tax system would minimize this reporting burden. He added that his organization had in the past supported measures for changing the existing local tax to a state tax. While the revenues generated would not change, the administrative burden would be reduced.

While comparative cost data on systems administered by organizations other than the State were unavailable, economies of scale experienced through state administration indicate a less costly system than one administered by the local governments. The cost of auditing taxpayers exemplifies this condition.

Regardless of which collection system is used, a local gas tax program would require an increase in auditing. State administration would incorporate audits already performed as part of the state tax program and preclude the need for additional auditing by local governments. Conversely, if local governments administer their own local tax program then the same taxpayer might be audited by both the State and local governments.

The reimbursement of administrative costs could complicate state administration of a local gas tax system. The cost of state administration is not fundamentally dependent upon the number of participating tax jurisdictions. Therefore, those counties and/or cities initially adopting a gas tax ordinance would bear a greater portion of the cost of administration until more entities adopt the tax. Additionally, the

State cannot budget out of the General Fund for the start-up costs for a local tax program. While precedents for borrowing necessary start-up funds from the State do exist, reimbursement periods would have to be long enough to ensure that those local governments initially adopting ordinances do not pay an unfair share of these costs. Otherwise, there could be a disincentive for early participation in the tax program.

Alternative B--Local Option

> Local governments would choose between contracting with the Board of Equalization or developing their own systems for administering the tax. This would place all operating functions--collection, compliance, audit, etc.--under local jurisdiction and control.

Items for Consideration

Local governments may prefer exercising total control over the administrative functions. Alabama's local fuel tax system gives local governments the option of state or local administration. Only 2 of the 277 participating local governments in Alabama have chosen to contract with the State for administration of the tax. Taxing jurisdictions in Alabama report that local administration of their gasoline tax program is less costly than state administration. The State Department of Revenue, which is responsible for administering the state gasoline tax as well as any contracted local gasoline taxes, charges 3.75 percent of gross revenues for administrative costs. This figure was arbitrarily selected and is not representative of actual administrative cost. Conversely, cities and counties we contacted in Alabama indicated that their administrative

costs generally range from one to two percent of gross revenues. However, the Alabama local governments we contacted did not generally have active audit programs which, if initiated, would increase the administrative cost dramatically.

Local administration of a gasoline tax system would duplicate certain administrative functions such as collection and auditing and, therefore, raise the administrative cost for the total program statewide.

TAX RATE

Alternative A--Fixed Rate

A fixed rate per gallon would be specified in the state law.

Items for Consideration

A fixed tax rate consistent throughout the State would simplify administration; hence, reducing cost. Administrative cost estimates developed by the Board of Equalization indicate that administration of a local gasoline tax program with a fixed tax rate would be from 10 to 39 percent less expensive to administer than one with a varying tax rate.* Specifically, a fixed rate simplifies the maintenance of tax accounts as well as distribution of net revenues.

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*The exact difference in cost depends on the point of collection and the level of government participation.

Additionally, a standardized tax rate would reduce the administrative burden on distributors and brokers. Local gasoline tax rates in Alabama range from one-fourth cent to three cents per gallon. The Alabama Petroleum Council has actively promoted standardization of the tax rate. The Director stated that varying tax rates throughout the state complicates recordkeeping for the distributor and broker. Data on the additional cost to the distributor were not available.

A fixed tax rate also removes local control of the tax rate-setting process. As a result, some local governments may decide against adopting the tax because the rate is too high or too low to meet their specific needs. For example, a one cent per gallon tax rate would provide Alpine County with only about $6,800. Six other counties would each receive less than $100,000. Based on the small amount of revenue generated, these counties may not see the tax as offering adequate benefits to offset the costs.

Alternative B--Varying Rate

> Local governments would select the tax rate up to a state-specified maximum. As a result, varying rates would exist throughout the State.

Items for Consideration

Varying tax rates up to a state-specified maximum give the State control over the maximum tax rate and provide local governments with flexibility to adjust the rate depending on local needs. Unlike the

elasticity of the sales tax or other value-based taxes which generate more revenue as inflation increases prices, gasoline tax revenues are dependent on the number of gallons sold. Due to increased gasoline prices and more efficient automobiles, California gasoline consumption from 1973 through 1975 remained relatively stable at about 10 billion gallons annually. Additionally, oil industry officials estimate that while gasoline consumption will increase modestly over the next few years, it will probably decrease over the long term. Concurrently, the cost of services has been increasing due to inflation. As a result, gasoline tax revenues--either state or local--will remain relatively constant while the cost of constructing and maintaining transportation facilities continues to increase. A varying tax rate would provide local governments the opportunity to set tax rates consistent with local needs and make adjustments to those rates as needs change.

Conversely, as discussed under Alternative A, a varying tax rate could increase the administrative burden and cost to the local governments and the gasoline distributors and brokers.

PARTICIPATION

Alternative A--County Levy

Only counties would be permitted to adopt local gasoline tax ordinances.

Items for Consideration

Restricting the adoption of local gasoline taxes to counties minimizes the administrative burden and cost placed on the administering authority. If state administration is provided in the law, the potential number of taxing jurisdictions is limited to 58. Furthermore, if the tax is collected at the point of distribution, distributors and brokers will not be required to maintain records reflecting distributions made in each city. Recordkeeping is reduced as are the total number of monthly reports and the payments necessary if local administration is allowed.

Alternative B--City and County Levy

> In addition to counties, cities would be permitted to levy a tax. The tax would be in lieu of any county-imposed tax.

Items for Consideration

City participation in a local-option gasoline tax system complicates administration and increases the administering authority's cost.

As indicated in the cost estimates developed by the Board of Equalization (see page 23), total administrative cost increases would range from \$3,533 to \$18,940 under a fixed tax rate, and from \$34,667 to

$43,171 under a varying tax rate.* These increases result primarily from the increased number of accounts requiring maintenance; as many as 472 accounts could exist under city participation as compared to only 58 accounts under a county-only program.

Additionally, if the tax is collected from the distributors and brokers, their administrative cost could also increase. Small brokers would be affected the most since their billing and tax accounts generally are maintained manually. Therefore, a direct relationship would exist between the number of accounts maintained and administrative cost.

Reduction of total county tax revenues is an additional impact of city taxing authority. While city participation in a local gasoline tax system would not exclude counties from imposing their own local gas tax, city taxes would reduce potential county revenue to the extent of city participation. This effect would be most evident in the more urban counties.

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*The exact increase depends upon whether collection of the tax occurs at the retailer or distributor/broker level.

CRITERIA FOR EVALUATING ALTERNATIVES

Each alternative presented above is administratively feasible, and each alternative has its own advantages and disadvantages. In order to evaluate each alternative in respect to its various benefits and costs, we identified the following criteria:

> Cost of Administration: The direct cost of operations associated with administering a local-option gasoline tax system. These operations may include electronic data processing; review and monitoring of tax returns; typing, clerical, and filing duties; enforcement and auditing; materials; mailing; staff salaries and benefits. Both start-up and annual costs must be considered.
>
> Ease of Administration: There are factors which impact on the administration of tax systems for which costs are not the only consideration. Specifically, these factors include utilizing existing systems, minimizing resource application, and centralizing functions.
>
> Flexibility to Meet Local Needs: While meeting local needs is not a factor impacting directly on the feasibility of a local-option gasoline tax system, it can indirectly influence how the tax is imposed and the system administered. Factors such as (1) the ability of local governments to match tax resources with revenue needs and (2) the ability of the local tax system to adjust as local needs change, influence the design of a local gas tax system which in turn may impact on its administration.
>
> Impact on Others: The degree of impact a local gas tax would have on gasoline distributors, brokers, retailers, consumers, the trucking industry, as well as others.

CONCLUSIONS AND RECOMMENDATIONS

Tax collection from the retailer instead of the distributor/broker increases the taxpaying population from 525 to 21,500. Associated with this increase are problems and costs which include (1) increased reporting delinquencies, (2) decreased control over accounts,

The two most administratively feasible taxation methods are:

	Method A	Method B
COLLECTION	Distributor/Local Broker	Distributor/Local Broker
ADMINISTRATION	State Administration	State Administration
TAX RATE	Varying rate (to a maximum) at local option	Fixed rate for all participating local governments
PARTICIPATION	County levy only	City and county levy
COST		
Start-up	$ 10,800	$10,800
Annual operating	$117,156	$92,937

As previously discussed, city participation in a local gasoline tax system compounds the administrative problems and costs. City participation increases the total potential tax accounts to 472 thus increasing the administrative requirements placed on both the State and the distributor/broker. If city gasoline taxes are authorized, varying rates would further complicate administration. For example, a county tax rate could be greater than one city's tax rate and less than another's. This condition would complicate many administrative functions including recordkeeping and distribution of tax revenues, and foster artificial price competition among retailers. Therefore, to minimize these problems and their associated costs, a fixed tax rate should be stipulated if enabling legislation authorizes both counties and cities to impose local gasoline taxes.

In order to determine the cost of a state-administered local-option gasoline tax system, the Board of Equalization developed cost estimates based on eight different assumptions. Both start-up and annual operating costs were estimated. The Board's analysis is summarized below:

	Start-up Costs	Annual Operating Costs
Tax Collected at Retailers Level		
Fixed Rate by County	$124,150	$325,560
Fixed Rate by County and City	124,150	344,500
Variable Rate by County	124,150	363,002
Variable Rate by County and City	124,150	406,173
Tax Collected at Distributors and Brokers Level		
Fixed Rate by County	10,800	89,404
Fixed Rate by County and City	10,800	92,937
Variable Rate by County	10,800	117,256
Variable Rate by County and City	10,800	151,923

Exhibit I presents information outlining each of the administrative options, assumptions, and detailed support for the Board's cost estimates.

OTHER MATTERS FOR CONSIDERATION

As part of our study, we identified four additional matters which merit consideration in (1) deciding to introduce local gasoline tax enabling legislation, and (2) designing a system to administer local gasoline taxes. Specifically, these issues are: taxation of diesel fuel, local gas tax uniformity, Federal Energy Administration Regulations, and effects local gasoline taxes could have on competition.

TAXATION OF DIESEL FUEL

Background

The State taxes both gasoline and diesel fuel for the purpose of funding the construction and maintenance of streets and highways. While gasoline taxes are imposed under the Motor Vehicle Fuel License Tax law, diesel fuel taxes are imposed and collected under the Use Fuel Tax law. The Use Fuel Tax is levied on those who use diesel fuel in motor vehicles on public roads. About 70 percent of diesel is exempt from this taxation as a result of farm, heating, and other non-highway uses.

The Board of Equalization administers the Use Fuel Tax system and collects revenues from the approximately 1,700 vendors and 43,000 users of diesel fuel (a small number of users who own private passenger automobiles are exempt from reporting). All vendors and users are licensed with the Board of Equalization. In fiscal year 1975-76,

administrative cost for the Use Fuel Tax program (diesel) was 3.4 percent of revenues collected as compared to 0.05 percent for the state gasoline tax program. During fiscal year 1975-76, the State collected $55 million in diesel tax revenue, or about eight percent of the total revenues collected from the state gasoline tax.

Local Fuel Tax on Diesel

We considered two alternative methods of collecting a local diesel fuel tax which would be administered by the State. The following outlines the two feasible alternatives and presents related information.

Alternative A--Vendors and Users

> Local diesel taxes would be collected at the time of final sale from the 1,700 vendors and 43,000 users currently paying taxes on diesel fuel. (This method could either allow off-road exemptions or no exemptions.)

Identifying fuel subject to this tax would be relatively simple since these records are now maintained and reported to the State by the vendors and users. Additional records would be required of vendors to identify the county and/or city in which the fuel was delivered.

Cost estimates for administration of a vendor-user collected diesel fuel tax in which current off-road exemptions are allowed is $71,000 for start-up procedures and $930,000 for continuing activities. This represents 5.6 percent of revenues collected assuming a two-cent per gallon local tax is adopted statewide.

Alternative B--Vendors Only

> Local diesel taxes would be collected from the 1,700 vendors at the time of delivery to retailers or consumers. The vendors would be responsible for maintaining records and making periodic reports and payments to the State.

Collection from vendors would minimize cost and control problems. This collection system could not be utilized if off-road diesel exemptions are allowed because (1) the vendor would have to maintain detailed records on the anticipated use of the fuel, and (2) a complicated system of tax credits would have to be established for purchasers of diesel fuel who used it in ways other than originally anticipated.

The Board of Equalization estimated start-up costs of $65,000 and annual operating costs of $194,000 for this tax collection system. This represents 0.38 percent of revenues collected from a two-cent per gallon local tax adopted statewide.

Diesel Revenues

Approximately 70 percent of diesel fuel is consumed for off-road use. Consequently a decision to allow off-road tax exemptions will significantly reduce revenues. A local fuel tax of two cents per gallon on diesel collected statewide will produce about $17 million if current off-road exemptions are allowed and $51 million if no exemptions are permitted.

Should all counties and cities not adopt the local diesel tax or adopt varying rates, the effect on competition would be similar to that for gasoline (see page 29). Also, a no-exemption local tax program would

create an additional tax burden on farmers, homeowners, and others who use the fuel for off-road and heating purposes since these consumers would be paying for road and highway maintenance and construction through the tax while using the fuel for non-road related purposes.

Conclusions and Recommendations

A local diesel tax is administratively feasible. If included in a local fuel tax program, we recommend that separate statutes be enacted for gasoline and diesel fuel. Two local taxes would provide counties or cities and counties flexibility in generating local tax revenues. This could be a significant consideration in rural counties if the diesel tax is imposed without exemptions.

We recommend that the diesel tax be collected either (1) from the vendor at time of delivery with no exemptions for off-road use or (2) from the vendor and user at the time of sale and use with the exemptions allowed for off-road use.

UNIFORMITY

State administration of a local-option gasoline tax system would help ensure consistency and uniformity of tax characteristics. For example, the point of tax collection and auditing requirements would be standardized. Unless specific provisions are included in state enabling legislation, local fuel tax ordinances could vary significantly in their design. As we discovered in Alabama, this would result in more complex administrative problems and increased cost.

Enabling legislation modeled after the Bradley-Burns Uniform Local Sales and Use Tax law would avoid this problem. The Bradley-Burns law stipulates that local sales and use tax ordinances must contain provisions identical to those in the state law. Under a local gasoline tax system, such qualifying provisions would ensure uniform tax characteristics and administration. These provisions might include:

- Contracting with the State Board of Equalization for performance of all administrative functions.
- Outlining allowable exemptions (if included in tax system).
- Setting effective dates for adopting ordinances and imposing taxes.
- Specifying amendment procedures for local taxes.

FEDERAL ENERGY ADMINISTRATION REGULATIONS

In May 1973, the Federal Energy Administration (FEA) established price regulations on gasoline and other fuels. The regulations froze gasoline prices and allowed only product cost increases to be passed on to the retailer and consumer.

In response to a request for interpretation by the State of Oregon in April 1975, the FEA concluded that an increase in the current state fuel license tax could not be included by a distributor in prices charged to its purchasers. In other words, a tax increase would represent

an increase in the cost of the distributor doing business rather than an increase in the cost of the product. Oregon applied for an exception to the regulations which was approved in October 1975 (see Exhibit IV).

This case has direct impact on California's authorization of local gasoline taxes. Without approval of an application for exception to FEA's regulations, the distributor could not pass on a local gasoline tax to the retailer and consumer. As a result, the distributor would have to absorb the cost of the tax. The decision on Oregon's application could serve as a precedent for approval of similar applications filed by taxing jurisdictions in California. However, conversations with FEA's Assistant Regional Counsel in San Francisco indicate that FEA will not give an official opinion until an application is filed. The Assistant Regional Counsel did state that it would probably be acceptable for the State of California to file one application for all local governments within the State. A single statewide application could be filed only if the state enabling legislation stipulated a maximum tax rate. Diesel fuel no longer falls under FEA price regulations.

EFFECT ON COMPETITION

Not all counties (and cities if authorized) may adopt a local gasoline tax. Not all California cities and counties elected to adopt ordinances under the Bradley-Burns Uniform Local Sales and Use Tax Law until nearly six years after its authorization. Due to the differing amounts of revenue generated by a local gasoline tax (see Appendix C), as well as other reasons, some local governments may not adopt the tax.

Inconsistent adoption of the tax, along with a varying tax rate structure, could affect the competitiveness of gasoline retailers operating near city and/or county boundaries. Distributors and brokers in both Alabama and California stated that local gasoline taxes would impact on the competitiveness of retailers. However, no industry or local government officials we contacted in Alabama could provide any examples of gasoline retailers going out of business or their sales declining as the result of local taxes. One industry official did state that the impact on competition would not be as significant today because of the increased number of independent gasoline retailers and the significant variations in retail gasoline prices.

Respectfully submitted,

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Auditor General

March 3, 1977

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SUMMARY OF LOCAL FUEL TAXES IN OTHER STATES

We identified and researched local fuel taxes in five other states--Alabama, Hawaii, Mississippi, New York, and Virginia. Each state has passed some form of legislation enabling local governments--either counties or cities and counties--to adopt local fuel tax ordinances. The major characteristics of each state's local fuel tax system are summarized below.

ALABAMA

Thirteen Alabama counties and 237 cities have levied local fuel taxes. Some of these taxes have existed for over 20 years. Generally, counties use the local fuel tax revenues for construction and maintenance of roads while cities place the revenues into their general fund. Alabama local governments have the option of either contracting with the Alabama Department of Revenue to perform all administrative functions or administering the tax themselves. Only two counties have contracted with the State. Local fuel taxes in Alabama are collected from the 358 gasoline distributors and 968 distributors of other motor fuel. Alabama's local fuel tax system lacks uniformity; local tax rates, allowable exemptions, and methods of enforcing compliance vary with each taxing jurisdiction.

HAWAII

Hawaii has no city governments and only four counties, each of which imposes local fuel taxes. The amount of each county's tax is determined by the respective Boards of Supervisors. The State administers the local tax for the counties free of charge. Both state and county gas tax reports and payments are made by the distributors.

In lieu of county adoption of a local fuel tax ordinance, the State set a temporary local rate. This rate was applicable only for the period July 1, 1955 to June 30, 1957. The rate, where applied, ranged from one to three cents per gallon. While counties adopting local fuel tax ordinances did not have to present the proposal to popular vote, they were required to hold public hearings. As of December 1976, all four counties had adopted local fuel taxes, the funds from which support roads and highways.

MISSISSIPPI

Mississippi has authorized three of its counties--Harrison, Jackson, and Hancock--to levy local fuel taxes for funding the construction and maintenance of seawalls in their counties. In 1948, a major hurricane destroyed the waterfront. Shortly after that, the State authorized the local taxes for those counties. The tax is two cents per gallon in two counties and three cents per gallon in the other county. The taxes are administered by the State and collected from the distributors.

NEW YORK

New York state law authorizes cities with a population of one million or more to levy a local gasoline tax on leaded fuels containing 1/2 gram or more of tetra ethyl lead, tetra methyl lead or other lead alkyls. Only New York City levies this local tax. The local tax rate is set by the State at one cent per gallon. The tax is collected and administered by the State.

VIRGINIA

Virginia authorizes governing bodies of counties and cities within a multi-member transportation district to impose local fuel taxes. The tax rate may not exceed four percent of the retail sales price and can be used to finance rapid transit systems. Additionally, the tax must be collected and disbursed by the State.

The enabling law was originally passed by the State for the benefit of the northern cities and counties which desired to construct a rapid transit system. As of December 1976, no local governments in Virginia had succeeded in establishing a transportation district and levying a tax.

STUDY METHODOLOGY

Evaluation of the administrative feasibility of a local gasoline tax system required study of (1) existing tax systems in California similar in structure to a local gas tax and (2) existing local fuel tax systems in other states.

We studied existing tax systems in California by researching existing tax laws and meeting with officials of the State Board of Equalization and Legislative Counsel.

We also contacted the California League of Cities, County Supervisors' Association of California, California Truckers Association, and 11 gasoline distributors and 22 brokers.

To develop information on local fuel taxes in other states, we contacted officials in Alabama, Hawaii, Mississippi, New York, and Virginia. Due to its long local gas tax history and the variety of tax characteristics, we studied in detail Alabama's local fuel tax system. In Alabama, we met with officials of:

Jefferson County	City of Montgomery
Walker County	Alabama League of Municipalities
Montgomery County	Alabama Petroleum Council
City of Birmingham	Alabama Truckers Association
City of Jasper	Alabama State Department of Revenue

In response to a request by the Auditor General, the Board of Equalization provided us with cost estimates of eight specific administrative systems.

PROJECTED ANNUAL LOCAL FUEL TAX REVENUE BY COUNTY

COUNTY	1975-76	------------CENTS PER GALLON------------		
	GALLONS SOLD	.01	.02	.03
ALAMEDA	458,591,451	4,585,914	9,171,829	13,757,743
ALPINE	701,112	7,011	14,022	21,033
AMADOR	6,376,432	63,764	127,528	191,292
BUTTE	66,269,879	662,698	1,325,397	1,988,096
CALAVERAS	10,934,892	109,348	218,697	328,046
COLUSA	13,439,217	134,392	268,784	403,176
CONTRA COSTA	463,220,023	4,632,200	9,264,400	13,896.600
DEL NORTE	18,059,178	180,591	361,183	541,775
EL DORADO	37,145.425	371,454	742,908	1,114,362
FRESNO	216,911,867	2,169,118	4,338.237	6,507,356
GLENN	19,211,708	192,117	384,234	576,351
HUMBOLDT	64,811,073	648,110	1,296,221	1,944,332
IMPERIAL	47.055,710	470,557	941,114	1,411,671
INYO	17,639,741	176,397	352,794	529,192
KERN	231,844,330	2,318,443	4,636,886	6,955,329
KINGS	21,133,002	211,330	422,660	633,990
LAKE	15,771,338	157,713	315.426	473,140
LASSEN	11,802,058	118,020	236,041	354,061
LOS ANGELES	3,501,868,100	35,018,681	70,037,362	105,056,043
MADERA	25,028,481	250,284	500,569	750,854
MARIN	89,675,962	896,759	1,793,519	2,690,278
MARIPOSA	6,276,800	62,768	125,536	188,304
MENDOCINO	39,893,293	398,932	797,865	1.196.798
MERCED	57,164,028	571,640	1,143,280	1,714.920
MODOC	4,958,217	49,582	99,164	148,746
MONO	8,152,583	81,525	163.051	244,577
MONTEREY	120,774,601	1,207,746	2,415,492	3,623,238
NAPA	41,438,201	414,382	828,764	1,243,146
NEVADA	32,208,118	322,081	644,162	966,243
ORANGE	734,753,464	7,347,534	14,695,069	22,042,603
PLACER	53,723,657	537,236	1,074,473	1,611,709
PLUMAS	15,207,988	152,079	304.159	456.239
RIVERSIDE	235,071,907	2,350,719	4,701,438	7,052,157
SACRAMENTO	355.957,210	3,559,572	7,119,144	10,678,716
SAN BENITO	11,185,817	111,858	223,716	335,574
SAN BERNADINO	378,961,076	3,789,610	7,579,221	11,368,832
SAN DIEGO	654,565,889	6,545,658	13,091,317	19,636.976
SAN FRANCISCO	395,084,201	3,950,842	7,901,684	11,852,526
SAN JOAQUIN	159,264,440	1,592,644	3,185,288	4,777,933
SAN LUIS OBISPO	74,116,187	741,161	1,482,323	2,223,485
SAN MATEO	250,983,468	2,509,834	5,019,669	7,529.504
SANTA BARBARA	138,325,780	1,383,257	2,766,515	4,149,773
SANTA CLARA	523,796,132	5,237,961	10,475,922	15,713,683
SANTA CRUZ	58,007,823	580,078	1,160,156	1,740.234
SHASTA	50,290,667	502,906	1,005,813	1,508,720
SIERRA	2,544,914	25,449	50,898	76,347
SISKYOU	21,479,869	214,798	429,597	644,396
SOLANO	100,849,479	1,008,494	2,016,989	3,025,484
SONOMA	116,914,792	1,169,147	2,338,295	3.507,443
STANISLAUS	176,441,693	1,764,416	3,528,833	5,293,250
SUTTER	18,962,014	189,620	379,240	568,860
TEHAMA	17,505,668	175,056	350,113	525,170
TRINITY	5,419,475	54,194	108,389	162,584
TULARE	93,139,703	931,397	1,862,794	2,794,191
TUOLUMNE	13,436,757	134,367	268,735	403,102
VENTURA	157,541,179	1.575,411	3,150,823	4,726,235
YOLO	53,070,516	530,705	1,061,410	1,592,115
YUBA	15,445,382	154,453	308,907	463,361
TOTALS	10,530,403,999	105,304,039	210,608,079	315,912,119

SOURCE OF FUNDS FOR CITY/COUNTY EXPENDITURES ON STREETS AND ROADS

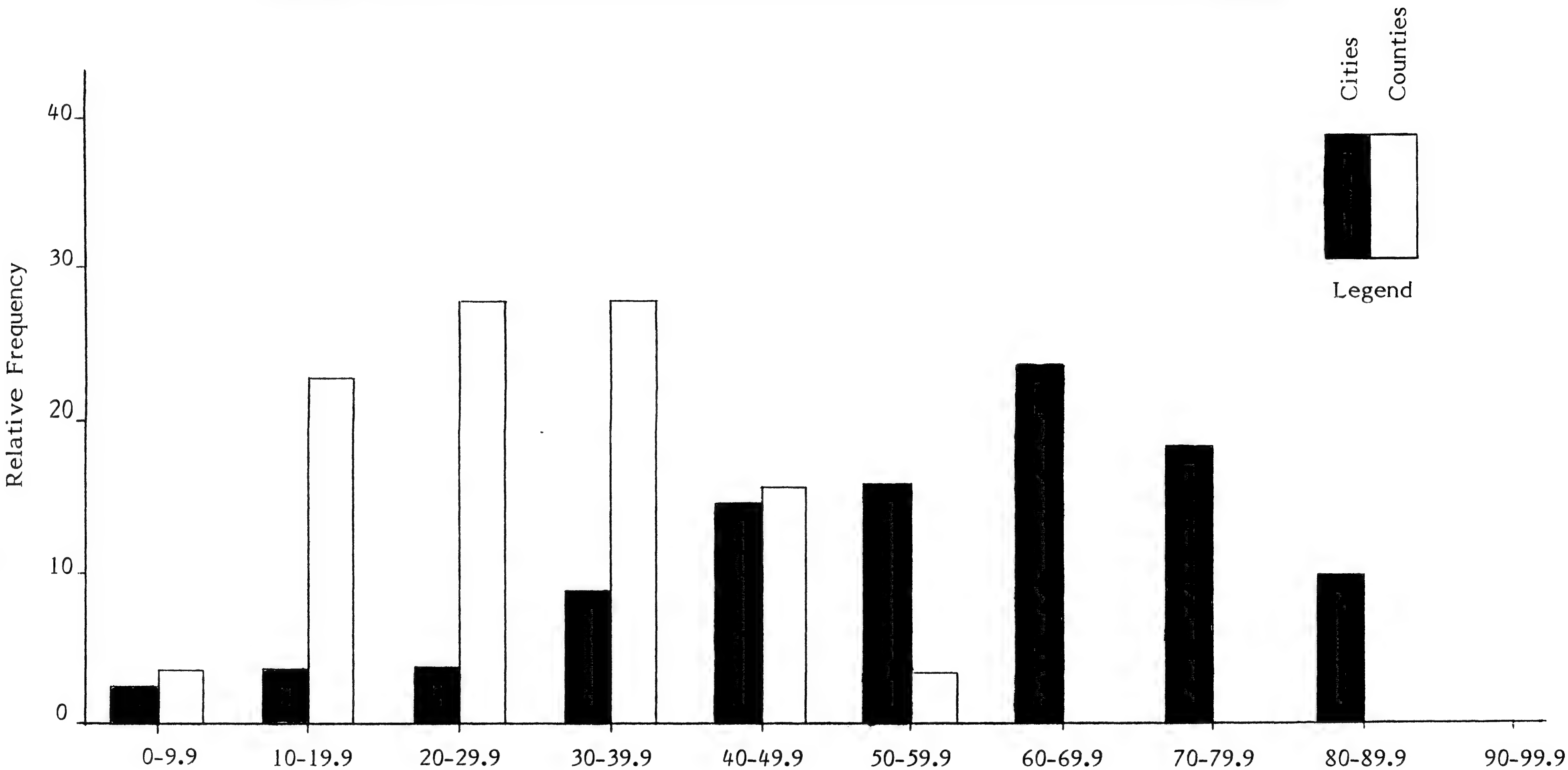
Local fuel taxes would produce large amounts of revenue for the maintenance and construction of local streets and roads. Currently, local governments fund significant portions of this street and road work through property taxes and other local sources. Local fuel taxes, earmarked for street and road use, could offset the need for other local funds presently used for these purposes and either free them for other uses or reduce the reliance thereon. The following graph and table illustrate how various counties presently use local funds for streets and roads.

The graph on page D-3 illustrates the distribution of counties which spend varying percentages of local funds for street and road use. For example, about 15 percent of the cities and 16 percent of the counties derive 40-50 percent of their street/road money from local sources. Overall, 29 percent of county funding and 64 percent of city funding for streets and roads were derived from local sources.

The table on page D-4 presents sources of street/road funds in each county for fiscal year 1974-75. Column (1) presents the total funds made available while columns (2) through (4) those funds derived from federal and state sources, county sources, and city sources. Column (5) represents the total street and road funds derived from local sources (the sum of columns (3) and (4)). Column (6) illustrates projected local gasoline

tax revenue based upon a tax of two cents per gallon and a statewide sales of 10.5 billion gallons. Column (7) shows the excess of local funds for roads and streets over the projected local gasoline tax revenue. Only Del Norte County would have gasoline revenue in excess of street/road funds derived from local sources. The final column shows the percent of total street/road funds which are derived from local sources in each of the 58 counties. Overall, 50 percent of total street/road funds come from city and county sources.

PERCENT OF STREET/ROAD MONEY DERIVED FROM CITY AND LOCAL SOURCES



Source: Annual Report--Financial Transactions Concerning Streets and Roads of Cities and Counties of California, Fiscal Year 1974-75, State Controller's Office.

SOURCE OF STREET/ROAD FUNDING AND PROJECTED LOCAL GASOLINE TAX ($.02/GAL.) REVENUES FOR VARIOUS COUNTIES, FISCAL YEAR 1974-75

COUNTIES	(1) TOTAL ROAD FUNDS AVAILABLE.$	(2) FEDERAL AND STATE SHARE,$	(3) COUNTY SHARE,$	(4) CITY SHARE,$	(5) TOTAL CITY AND COUNTY SHARE,$	(6) PROJECTED REVENUE ($.02/GAL)	(7) EXCESS CITY& COUNTY SHARE OVER REV.,$	(8) % CITY & COUNTY SHR TO TOTAL
ALAMEDA	50.855,658	25,497,214	1,835,459	23,522,985	25,358,444	9,171,829	16.186,614	49.86
ALPINE	379,912	335.339	44.573	0	44,573	14.022	30,550	11.73
AMADOR	973,540	625.590	137,234	210.716	347,950	127,528	220,421	35.74
BUTTE	5.997.217	3.245.633	1,472,844	1,278,740	2,751,584	1,325,397	1,426,186	45.88
CALAVERAS	1,263,232	778,802	432,447	51,983	484,430	218,697	265.732	38.34
COLUSA	1.463,679	739.476	599,334	124,869	724,203	268,784	455,418	49.47
CONTRA COSTA	23.069,064	11,679,522	3,661.684	7,727,858	11,389,542	9,264,400	2,125,141	49.37
DEL NORTE	1.272.789	1.009,797	141,545	121,447	262,992	361,183	-98,191	20.66
EL DORADO	4.810.527	2,460,198	1,370,775	979,554	2,350,329	742,908	1,607,420	48.85
FRESNO	23,767,282	14,761,613	3,470,659	5,535,010	9.005,669	4.338,237	4,667,431	37.89
GLENN	2,115.763	1,387,671	485,013	243,079	728,092	384,234	343,857	34.41
HUMBOLT	6,850,229	3,470,572	2,362,430	1.017,227	3,379.657	1.296,221	2,083,435	49.33
IMPERIAL	4.523,957	2.673,054	696,397	1,154,506	1,850,903	941,114	909,788	40.91
INYO	1,283,003	927,868	221,773	133.362	355,135	352.794	2,340	27.67
KERN	14,877,621	9.467,778	2,360,643	3,049,200	5,409,843	4,636,886	772,956	36.36
KINGS	3,235,648	1,616,565	760,146	858,937	1,619,083	422,660	1,196.422	50.03
LAKE	1,476,330	888,670	452,711	134,949	587,660	315,426	272.233	39.80
LASSEN	2.479,510	1,944,381	285.021	250,108	535,129	236,041	299,087	21.58
LOS ANGELES	285,232,255	129,059,720	21,647,582	134,524,953	156,172,535	70,037,362	86,135,172	54.75
MADERA	3,260,542	2,309.663	282,980	667,899	950,879	500,569	450,309	29.16
MARIN	8,844,827	4,043,782	1,717,425	3,083,620	4,801,045	1,793,519	3,007,525	54.28
MARIPOSA	1.127,310	820,985	306,325	0	306,325	125,536	180.788	27.17
MENDOCINO	6,399.446	4,225,986	1,418,801	754.659	2,173,460	797,865	1,375,594	33.96
MERCED	5,361.804	2,968.503	1,432,474	960,827	2,393,301	1,143,280	1,250,020	44.63
MODOC	1.711.905	1,340.536	183,127	188,242	371,369	99,164	272,204	21.69
MONO	892,200	625,539	266,661	0	266,661	163.051	103,609	29.88
MONTEREY	12,648.261	4,825,329	2,885,267	4,937.665	7,822,932	2,415,492	5,407,439	61.84
NAPA	3,746.437	2.456,618	454,409	835,410	1,289,819	828,764	461,054	34.42
NEVADA	2.256.463	1.567,562	399,052	289,849	688.901	644,162	44,738	30.53
ORANGE	71,393,798	32.145,082	5.186,796	34,061,920	39,248,716	14,695,069	24.553.646	54.97
PLACER	6.189,143	4.593.868	912,905	682,370	1,595.275	1,074,473	520,801	25.77
PLUMAS	2.908,745	2,579,478	284.619	44,648	329.267	304,159	25,107	11.31
RIVERSIDE	21,959.822	9.734,201	3,207,073	9,018,548	12,225,621	4.701.438	7,524,182	55.67
SACRAMENTO	22,795,164	14,109.217	2,806,932	5,879,015	8,685,947	7,119.144	1,566.802	38.10
SAN BONITO	902,619	473,304	241,809	187,506	429.315	223.716	205,598	47.56
SAN BERNARDINO	26,656.119	11,325.020	3,905.942	11,425,157	15,331,099	7,579.221	7,751,877	57.51
SAN DIEGO	44,404.800	27.894,729	1,570,151	14,939,920	16,510.071	13,091,317	3,418,753	37.18
SAN FRANCISCO	19,654,561	10.463,474	4,346,777	4,844.310	9.191,087	7,901.684	1,289,402	46.76
SAN JOAQUIN	16.801.910	7,951,345	3,602,421	5.248,144	8.850.565	3,185,288	5,665,276	52.67
SAN LUIS OBISPO	6.034.048	2.959.373	1,333,519	1,741,156	3,074.675	1,482,323	1,592,351	50.95
SAN MATEO	18,314.253	10,753,561	1.400,834	6,159.858	7,560,692	5,019,669	2.541,022	41.28
SANTA BARBARA	8,311.518	4,180,526	1,532,293	2.598.699	4,130.992	2,766,515	1.364.476	49.70
SANTA CLARA	56.526,053	22.000,680	2,094,230	32,431,143	34,525,373	10.475,922	24.049,450	61.07
SANTA CRUZ	5,162,490	2,710,669	781,000	1,670,821	2,451,821	1,160.156	1.291,664	47.49
SHASTA	7.468,461	4,166,866	2.247,628	1.053,967	3,301.595	1,005.813	2,295.781	44.20
SIERRA	784.938	683,023	70.969	30,946	101,915	50,898	51.016	12.98
SISKIYOU	5.838.566	4.455.769	598.323	784.474	1,382,797	429,597	953,199	23.68
SOLANO	7,056,231	3.260.723	776.603	3.018,905	3,795,508	2,016,989	1.778,518	53.78
SONOMA	14,341,707	6.099,258	4,002,660	4,239,789	8,242.449	2.338,295	5,904.153	57.47
STANISLAUS	9,288,113	5,349,311	1,431,385	2.507.417	3,938,802	3,528,833	409.968	42.40
SUTTER	1,885.658	1,018,476	431,797	435.385	867,182	379.240	487.941	45.98
TEHAMA	2,966.506	1,783.491	811,807	371,208	1,183.015	350,113	832.901	39.87
TRINITY	3,032.159	2.854.825	177,334	0	177,334	108,389	68.944	5.84
TULARE	10.398,950	5.876,253	1,935,970	2,586,727	4,522,697	1,862.794	2,659.902	43.49
TOULUMNE	2,197.286	1,329,091	747.257	120,938	868.195	268.735	599.459	39.51
VENTURA	16,914,964	8.866.872	690.764	7,357.328	8,048.092	3.150,823	4.897.268	47.57
YOLO	4,560,426	1,917.762	1.377.481	1.265.183	2,642,664	1,061,410	1,581.253	57.94
YUBA	1,906.884	1,112,076	487.020	307.788	794,808	308,907	485,900	41.68
TOTALS	898,832,303	450,402.289	100,779.090	347,650,924	448,430,014	210,608,079	237.821.934	49.89

State of California Board of Equalization

Memorandum

EXHIBIT I

To : Mr. Richard C. Mahan
Office of the Auditor General

Date : February 1, 1977

From : W. W. Dunlop

Subject: Optional Local Tax on Gasoline

You asked Mr. Chamberlain of our staff to cost various alternative methods of collecting a tax on gasoline. Attached are those estimates with supporting material.

The estimates to administer a gas tax under the eight alternative methods are summarized below.

	Preparatory Costs	Ongoing Costs
Tax Applies at Retailers Level		
Fixed Rate by County	$124,150	$325,560
Fixed Rate by County and City	124,150	344,500
Variable Rate by County	124,150	363,002
Variable Rate by County and City	124,150	406,173
Tax Applies at Distributors & Brokers Level		
Fixed Rate by County	10,800	89,404
Fixed Rate by County and City	10,800	92,937
Variable Rate by County	10,800	117,256
Variable Rate by County and City	10,800	151,923

We are now developing estimated costs to administer a two-cent tax on diesel as requested by Mr. Alexander of your staff.

If you have any questions regarding these figures, please contact Mr. Chamberlain at 5-3498.

W. W. Dunlop

WWD:jw
Attachment

cc: Mr. D. D. Bell
Mr. J. D. Dotson
Mr. Charles Cordell
Mr. Robert Gustafson
Mr. H. A. Chamberlain
Mr. K. Hamamoto

State of California

Board of Equalization

Memorandum

To : Mr. H. A. Chamberlain

Date : January 25, 1977

From : K. Hamamoto

Subject: Optional Local Tax on Gasoline

Here are four cost estimates to implement the proposed optional local tax on gasoline. These estimates are based on the assumption that the local tax would be levied at the retail level or at the MVF broker or distributor level. Also, the rate of tax would be either at a fixed rate or at a variable rate from one county and/or city jurisdiction to another. Thus, there are four possible ways this local tax can be imposed:

Option I. Optional local tax at a fixed rate imposed at the retail level.

Option II. Optional local tax at a variable rate to be collected by MVF brokers and distributors.

Option III. Optional local tax at a variable rate imposed at the retail level.

Option IV. Optional local tax at a fixed rate to be collected by MVF brokers and distributors.

A copy of the assumptions and detailed workload estimates prepared by the various units in the Department of Business Taxes is attached for your reference.

K. Hamamoto

KH:jw

Attachment

ESTIMATED COST TO THE BOARD OF EQUALIZATION

OPTION I. Optional Local Gasoline Tax at a Fixed Rate on Retailers.

Headquarters Costs	Preparatory Cost	1977-78 (Full Year)
EDP		
Various classes (including staff benefits)	$62,000	$91,000
Return Review Unit		
2.6 (3.4)* Tax Representatives	--	37,534(49,082)*
2.2 (2.9)* Sr. Acct. Clerk	--	23,232(30,624)*
2.5 (2.5)* Cal. Machine Opr.	--	24,120(24,120)*
Local Tax Unit		
1.0 Sr. Acct. Clerk	--	10,560
Checking and Typing Unit		
2.0 Clerk Typist II	--	17,664
Cashier Unit		
2.5 Account Clerk II	--	22,080
Central Files Unit		
1.5 Clerk II	--	13,248
Mail Room		
490 man/hrs. @ Clerk II	--	2,083
Staff Benefits (22%)	--	33,115
General Operating Expense (10%)	--	27,464
Forms, Notices, Supplies	23,150	
Postage	39,000	
Field Costs		
Compliance	--	--
Audit	--	23,460
340 audits x 3 audit hrs. x $23 per hour (includes staff benefits and General Operating Expense)		
	$124,150	$325,560 (344,500)*

* If the optional local gasoline tax is adopted by city and county.

OPTION II Optional Local Gasoline Tax at a Variable Rate on Retailers

Headquarters Costs	Preparatory Cost	1977-78 (Full Yr)	
EDP			
Various classes (incl. staff benefits)	$ 62,000	$ 91,000	
Return Review Unit			
3.9 (4.3)* Tax Representatives	-	56,300	(62,075)*
3.3 (3.7)* Sr. Acct. Clerks	-	34,848	(39,072)*
2.5 (2.5)* Calc. Machine Operators	-	24,120	(24,120)*
Local Tax Unit			
1.0 Sr. Acct. Clerk	-	10,560	
Checking and Typing Unit			
2.0 Clerk Typists II	-	17,664	
Cashier Unit			
2.5 Acct. Clerks II	-	22,080	
Central Files Unit			
1.5 Clerk II	-	13,248	
Mail Room			
490 man/hrs. @ Clerk II	-	2,083	
Staff Benefits (22%)	-	59,819	
General Operating Expense (10%)	-	33,172	
Forms, Notices, Supplies	23,150	-	
Postage	39,000	-	
Field Costs			
Compliance	-	-	
Audit			
340 audits x 4 audit hrs. x $23 per hr (incl. staff benefits and General Operating Expense)	-	31,280	
	$124,150	$363,002	(406,173)*

*If the optional local gasoline tax is adopted by City and County.

OPTION III Optional Local Gasoline Tax at a Variable Rate on Brokers and Distributors

Headquarters Costs	Preparatory Cost	1977-78 (Full Yr)
Addressograph		
6 hrs @ Clerk II	Minimal	$ 26
Local Tax Unit		
1 Sr. Acct. Clerk	-	10,560
Excise Tax Unit		
.1 (.2)* Supv. Tax Auditor I	-	2,093 (4,186)*
1.5 (3.0)* Tax Auditor II	-	23,742 (47,484)*
1.0 (2.0)* Clerk Typist II	-	8,832 (17,664)*
Cashier Unit		
.5 Clerk Typist II	-	4,416
Mail Room	-	Minimal
Staff Benefits (22%)	-	10,927
General Operating Expense (10%)	-	6,060
Forms, Notices, Supplies	10,000	-
Postage	800	-
Field Costs		
Compliance	-	-
Audit		
110 audits x 20 hrs. per audit x $23 per hr. (incl. staff benefits and general operating expense)	-	50,600
	$10,800	$117,256 (151,923)*

*If the optional local gasoline tax is adopted by City and County.

OPTION IV. Optional Local Gasoline Tax at a Fixed Rate on Brokers and Distributors

Headquarters Costs	Preparatory Cost	1977-78 (Full Year)
Addressograph		
6 hrs. @ Clerk II	Minimal	$ 26
Local Tax Unit		
1 Sr. Acct. Clerk	--	10,560
Excise Tax Unit		
.1 (.1)* Supv. Tax Auditor I	--	2,093 (2,093)*
1.0 (1.0 * Tax Auditor II	--	15,828 (15,828)*
.4 (.8)* Clerk Typist II	--	3,533 (7,066)*
Cashier Unit		
.5 Clerk Typist II	--	4,416
Mail Room	--	Minimal
Staff Benefits (22%)	--	8,020
General Operating Expense (10%)	--	4,448
Forms, Notices, Supplies	10,000	--
Postage	800	--
Field Costs		
Compliance	--	--
Audit		
110 audits x 16 hrs. per audit x $23 per hr. (includes staff benefits and General Operating Expense)	--	40,480
	$10,800	$89,404 (92,937)*

* If the optional local gasoline tax is adopted by city and county.

OPTIONAL LOCAL TAX ON GASOLINE
PAID BY RETAILERS

1. The local gasoline tax at a fixed or variable rate ~~of up to 2¢~~ per gallon will be imposed at the retail level.

2. There will be no use tax, refunds or exemptions provisions.

3. There will be approximately 24,000 gas selling locations operated by 16,000 taxpayers - mostly service station operators.

4. This local gas tax will be administered as a separate tax, not part of the sales and use tax program.

5. Separate return will be designed for the purpose of reporting this local tax. There is no room to include this on the existing return.

6. New account numbers will be used and a separate registration record will be maintained. Most of the taxpayers selling gasoline can be identified by the code "G" currently on the sales tax registration record.

7. The taxpayers will be on a monthly reporting basis to ensure cash flow and control.

8. The delinquency control and accounts receivable functions will be automated as a separate program so they may be incorporated into the Business Taxes Information System.

9. There will be no need for floor tax provisions.

10. Addressing and processing of approximately 192,000 returns will be accomplished by EDP methods.

11. All incoming tax returns will be batched separately and payments will be kept separate.

12. The Board will be reimbursed for cost of administering this proposed local tax on gasoline.

13. Approximately 340 taxpayer accounts will be audited each year - each audit requiring an average of 4 audit hours per account.

14. There will be additional work related to allocation of the proposed local tax.

15. Enforcement of the proposed local tax on gasoline would be difficult and costly.

Optional Local Tax on Gasoline
Paid by Distributors and Brokers

Basic Assumptions to Administer the Optional Local Tax on Gasoline:

1. The optional local tax on gasoline will be at the fixed or variable rate ~~up to 2¢~~ per gallon.
2. The city and/or county in this state will adopt an ordinance to impose this tax to be administered by the Board of Equalization.
3. There will be no use tax, refunds or exemptions similar to the sales tax law.
4. There will be no need for floor tax provisions.
5. The taxpayers will be on a monthly reporting basis.
6. There will be approximately 525 taxpayers in this state (400 brokers and 125 distributors) if all of the 58 counties adopt the proposed optional local tax on gasoline.
7. Addressing and processing of approximately 6,300 returns will be handled by addressograph .
8. The optional local tax on gasoline will be reported on a separate schedule designed for the purpose of allocating the local tax.
9. The Board will be reimbursed for the cost of administering the proposed local tax on gasoline.
10. The local tax on gasoline will be imposed at the MVF brokers and distributor level (there are approximately 525 brokers and distributors).
12. There would be a need to have the brokers make a monthly report since brokers are on a quarterly reporting basis.

13. Enforcement and audit programs would be complicated because of the following factors:

    (a) Difficulty of record keeping by the taxpayers.

    (b) Variable rate of tax for city and/or counties.

14. Delinquency control process would be complicated and, for the most part, must be handled manually rather than by EDP methods.

State of California | Board of Equalization

Memorandum

To : Mr. Kaz Hamamoto

Date : January 17, 1977

From : H. S. Hardin

Subject: Optional Local Tax on Gasoline

As you requested in your January 7 memo, attached are detailed cost estimates prepared by certain affected headquarters units. (Excise Tax Unit's supporting data will be forwarded to you shortly.) We wish to emphasize that these estimates are based on the premise that the tax will be an extension of either the present sales and use tax or motor vehicle fuel license tax programs and not a new tax program with separate processes involving registration, account maintenance, close out, etc. If such is not the case, revised estimates will be required.

Our additional manpower needs can be summarized as follows: (Option numbers correspond with that used in your memo.)

Unit	Options 1	2	3	4
Return Review				
Tax Rep.	2.6 (3.4)*	3.9 (4.3)*	0	0
Sr. Acct. Clerk	2.2 (2.9)*	3.3 (3.7)*	0	0
Cal. Machine Opr.	2.5 (2.5)*	2.5 (2.5)*	0	0
Local Tax				
Sr. Acct. Clerk	1.0 (1.0)*	1.0 (1.0)*	1.0 (1.0)*	1.0 (1.0)*
Excise Tax				
Superv. Tax Auditor I	0	0	.1 (.2)*	.1 (.1)*
Tax Auditor II	0	0	1.5 (3.0)*	1.0 (1.0)*
Clerk Typist II	0	0	1.0 (2.0)*	.4 (.8)*

* City and County

We foresee no additional positions for our district offices or for our Headquarters Registration and Collection units.

H S Hardin

HSH:jk
Attachments

State of California | Board of Equalization

Memorandum

To : Mr. H. S. Hardin

Date : January 13, 1977

From : L. S. Roberts, Return Review Unit

Subject: Optional Local Tax on Gasoline

You asked us to prepare workload estimates and personnel requirements for the subject proposal.

Estimates have been prepared assuming that the tax would be collected at the retail level by counties and/or cities at either a fixed or variable rate. Estimates have not been prepared for the premise that the tax would be collected by MVF Brokers and Distributors, on the assumption that in this event return processing would be handled by the Excise Tax Unit.

Since it is improbable that the present Sales and Use Tax return will be amended to accommodate this tax, we proceeded on the assumption that a separate tax return will be required. We anticipate that 18,500 service stations reporting monthly and 3,000 other sellers of gasoline reporting quarterly will generate 234,000 Motor Vehicle Excise Tax returns each year.

Return Review personnel requirements for the probable conditions are shown below. Supporting detail is attached.

Condition	Positions Required	
Fixed Rate by County	Tax Representative	2.6
	Sr. Account Clerk	2.2
	Calculating Machine Op.	2.5
Fixed Rate by City/County	Tax Representative	3.4
	Sr. Account Clerk	2.9
	Calculating Machine Op.	2.5
Variable Rate by County	Tax Representative	3.9
	Sr. Account Clerk	3.3
	Calculating Machine Op.	2.5
Variable Rate by City/County	Tax Representative	4.3
	Sr. Account Clerk	3.7
	Calculating Machine Op.	2.5

DCG:mj

Supporting Detail
for
Workload Estimates and Personnel Requirements

18,500	X	12	=	222,000	Expected Returns from Service Stations
3,000	X	4	=	12,000	" " " other sellers
				234,000	Total additional returns to be processed by Return Review Unit

Equation Used to Determine Employees Required:

Returns X Error Rate = Workload div. by Yearly Production Rate = Positions Required

Fixed Rate by County

234,000	X	.0348	=	8,143	div. by	3,170	=	2.6	Tax Reps
234,000	X	.0623	=	14,578	div. by	6,550	=	2.2	Sr. Clks.
234,000	-	-	=	234,000	div. by	93,300	=	2.5	CMO
						TOTAL		7.3	

Fixed Rate by City/County

234,000	X	.0464	=	10,858	div. by	3,170	=	3.4	Tax Reps
234,000	X	.0830	=	19,422	div. by	6,550	=	2.9	Sr. Clks.
234,000	-	-	=	234,000	div. by	93,300	=	2.5	CMO
						TOTAL		8.8	

Variable Rate by County

234,000	X	.0522	=	12,215	div. by	3,170	=	3.9	Tax Reps
234,000	X	.0934	=	21,856	div. by	6,550	=	3.3	Sr. Clks.
234,000	-	-	=	234,000	div. by	93,300	=	2.5	CMO
						TOTAL		9.7	

Variable Rate by City/County

234,000	X	.0580	=	13,572	div. by	3,170	=	4.3	Tax Reps
234,000	X	.1038	=	24,289	div. by	6,550	=	3.7	Sr. Clks.
234,000	-	-	=	234,000	div. by	93,300	=	2.5	CMO
						TOTAL		10.5	

State of California

Board of Equalization

Memorandum

To : Jim Todd

Date : January 13, 1977

From : Robert M. Hocking

Subject: Optional Local Tax on Gasoline - Cost Estimate

I. Fixed or variable rate of tax imposed at the retail level by counties and/or cities.

<u>Assumptions</u>

1. Separate monthly returns filed.

2. Allocation and distribution based on total gallons sold in each county. Allocation accomplished by tape match to registration records which would contain county identification of permittee.

3. National firms and large oil companies will file consolidated returns with supplemental allocation schedule.

4. Tax imposed will be a county tax and allocations and distribution of the tax would be made to the county governments. No distribution to cities.

<u>Number of Returns</u>

1. Service Stations 18,500 x 12	=	222,000
2. Others Selling Gas 3,000 x 12	=	36,000
Total Returns Per Year		258,000

Computation of Cost Estimate

Return Processing - Scheduled Returns

Total Returns Per Year	258,000
Estimate of Scheduled Returns	5%
Total Scheduled Returns	12,900

	Total	Time Factor Per Return (HRS)	Total Hours
Returns	12,900	.024	310
Adjustments (5%)	645	.260	168
Audit: Returns (6%)	774	.17	132
Questionable (3%)	387	.79	306
Support			106
Total Hours			1022

Position Required - Senior Account Clerk

Variable rate will increase the complexity and result in additional hours.

II. Fixed or variable rate of tax imposed at the broker and distributor level by counties and/or cities.

Assumptions

1. Monthly returns filed by 600 distributors and brokers.

2. Distribution of tax based on total gallons sold in each county.

3. Distributor and brokers provide allocation information with returns filed.

Jim Todd
Page 3
January 13, 1977

Computation of Cost Estimate

	Total	Time Factor Per Return (HRS)	Total Hours
Returns	7200	.024	173
Adjustments (12%)	864	.26	225
Audit: Returns (6%)	432	.17	73
Questionable (3%)	216	.79	171
Support			71
Total Hours			713

Position Required - Senior Account Clerk

Variable rate will increase the complexity and result in additional hours.

If legislation introduced provides for distribution of tax on some statistical basis which can be adjusted yearly, the cost factor for the Local Tax Unit would be minimal.

Robert M. Hocking

RMH:db

State of California

Board of Equalization

Memorandum

EXHIBIT II

To : Mr. Richard V. Alexander
Office of the Auditor General

Date : February 11, 1977

From : W. W. Dunlop
Executive Secretary

Subject: Optional Local Tax on Use Fuel

Attached are the estimates you requested on the administrative costs to collect an optional local tax on use fuel. The assumptions on which these costs were based is included.

If you have any questions regarding these estimates, please contact Mr. Chamberlain at 5-3498.

W. W. Dunlop

WWD:mc

Attachment

cc: Mr. D. D. Bell
Mr. J. D. Dotson
Mr. Charles Cordell
Mr. Robert Gustafson
Mr. Arthur Skaggs
Mr. H. A. Chamberlain
Mr. K. Hamamoto

OPTIONAL LOCAL TAX ON USE FUEL

PLAN I

Assumptions

1. The proposed local tax on use fuel (diesel, liquefied petroleum gas, liquid natural gas and compressed natural gas) would be collected by vendors.

2. Vendors will report the local tax each month.

3. Under this option, there would be no exemptions which are currently provided under the use fuel tax law.

4. A schedule would be added to the tax return to report the county where the use fuel was pumped.

5. The definition of the word "vendor" would be broadened to include anyone such as brokers and distributors.

6. There are about 1750 vendors registered by the Board, however, the number of vendors would also include an estimated 250 who are currently exempt from the use fuel tax program.

7. The following cost estimate assumes that all of the counties will adopt an ordinance imposing the local tax on use fuel.

Workload Impact

1. There would be little or no additional compliance activity in the field to enforce the local tax on use fuel.

2. There would be an estimated 193 field audits to be performed by the audit staff. (Brokers and distributors of use fuel who are currently exempt from use fuel fuel to off-highway users would be required to be registered and file tax returns.)

3. There would be some EDP reprogramming resulting in additional costs.

4. A change to the use fuel tax return would result in errors, more correspondence to the taxpayers, etc. affect the workload of the Return Review Unit.

Details of Costs	Preparatory Cost	1977-78 (Full Year)
Headquarters Costs		
EDP		
Various classes (including staff benefits)	$ 63,000	$ 25,000
Return Review Unit		
.5 Tax Representatives	-	7,218
.5 Cal. Machine Operator	-	4,824
Local Tax Unit		
1 Sr. Account Clerk	-	10,560
Checking and Typing Unit		
.5 Clerk Typist II	-	4,416
Central Files Unit	-	Minimal
Mail Room	-	"
Cashier Unit	-	"
Staff Benefits (22%)	-	11,444
General Operating Expenses (10%)	-	6,346
Forms, Notices, Supplies	1,300	-
Postage	260	-
Field Costs		
Compliance	Minimal	Minimal
Audit		
5,390 audit hrs. @ $23 per hr.	-	123,970
TOTAL COST OF ADMINISTRATION	$64,560	$193,778

PLAN II

Assumptions

1. The proposed local tax on use fuel (diesel, liquefied petroleum gas, liquid natural gas and compressed natural gas) would be collected by the users and vendors.

2. Users and vendors will report the local tax each month.

3. Under this option, the exemptions under the use fuel tax law would apply.

4. A schedule would be used to show where fuel is placed in the tank of a vehicle.

5. There are 39,000 vendors and users reporting the local tax if all of the counties adopted a local ordinance imposing the local tax.

Workload Impact

1. There would be little or no additional compliance activity in the field to enforce the local tax on use fuel.

2. There would be an estimated 870 field audits to be performed by the audit staff requiring an additional 8 hours to audit vendors and 16 hours to audit users. More audit hours would be spent to verify the accuracy of the location where the fuel was placed in the tank of a vehicle.

3. There would be a significant EDP reprogramming cost, since there is currently no local tax on use fuel.

4. There would be a significant workload impact in the Return Review Unit to verify the mathematical accuracy of the tax on the returns and to resolve taxpayer's problems related to the local tax.

Details of Costs	Preparatory Cost	1977-78 (Full Year)
Headquarters Costs		
EDP - various classes (including staff benefits)	$ 64,000	$286,000
5 Tax Representatives	-	72,180
4.5 Sr. Clerks	-	47,520
5 Cal. Machine Oprs.	-	48,240
Local Tax Unit		
1 Sr. Account Clerk	-	10,560
Checking and Typing Unit*		
2.5 Clerk Typists II	-	22,080
Central Files Unit*		
2.5 Clerks II	-	22,080
Mail Room*		
930 man/hours @ Clerk II	-	3,953
Cashier Unit*		
4 Clerks II	-	35,328
Staff Benefits (22%)	-	57,627
General Operating Expense (10%)	-	31,957
Forms, Notices, Supplies	1,750	-
Postage	5,000	-
Field Costs		
Compliance	Minimal	Minimal
Audit		
12,720 audit hrs. @ $23 per hr.	-	292,560
TOTAL COST OF ADMINISTRATION	$70,750	$930,085

*Staff requirements would be substantially reduced if only the more populated counties in the state adopt local ordinances for the local tax on use fuel.

Prepared by: K. Hamamoto February 10, 1977

Supporting Details for Computation of Field Audit Costs

.. Tax on Vendors

(Tax applies at time of sale regardless of use by consumers. No exemptions.)

1,750	Vendors
126	Brokers
124	Distributors
2,000	

Per Year Audits of Vendors	150 x 16 hrs.	2,400	additional hrs.
Per Year Audits of Brokers (48 — 400 x 126 = 15)	15 x 50 hrs.	750	" "
Per Year Audits of Distributors (28 — 124 x 124 = 28)	28 x 80 hrs.	2,240	" "
Total Additional Audit Hours		5,390	
Additional Costs @ $23 per hr.		$123,970	

2. Tax on Vendors if delivered into a fuel tank of a motor vehicle. Tax on Users if delivered into bulk storage. Existing exemptions apply.

1,750	Vendors
37,250	Users
39,000	

Per Year Audit of Vendors	150 x 8 hrs.	1,200	additional hrs.
Per Year Audit of Users (863 — 44,652 x 37,250 = 720)	720 x 16 hrs.	11,520	" "
Total Additional Audit Hours		12,720	
Additional Costs @ $23 per hr.		$292,560	

FEDERAL ENERGY ADMINISTRATION OPINION DATED OCTOBER 3, 1975

¶ 83,320

State of Oregon, Salem, Oregon (Case No. FEE-1829, Filed 7-25-75, Decided 10-3-75).

Motor gasoline.—The State of Oregon filed an Application for Exception from the provisions of the Mandatory Petroleum Price Regulations. The exception relief requested would permit dealers and other resellers and retailers of motor gasoline in the State to increase their selling prices to reflect a one cent per gallon increase in the license tax on dealers of motor gasoline which the State intends to implement. In considering the exception request, the FEA determined that the State has utilized this form of gasoline tax for over fifty years in order to provide revenues for the maintenance of State highways. The cost of the tax has traditionally been borne by consumers, consistent with the State's goal of apportioning the costs of highway maintenance according to relative use. Under FEA Regulations, however, since the tax is not formally imposed on the ultimate consumer, even though that is its effect, its cost may not be passed through to the consumer by increasing the selling price for motor gasoline. Since there is no practical difference between the tax as implemented and a tax imposed directly on the consumer and in view of the important objectives which the State wishes to further, the FEA determined that the burden to

[2] In its Application, the SBA states that the proposed list of supply contracts with the DFSC is "tentative."

the State of either foregoing the tax increase or revamping its tax structure so outweighed any possible benefits as to result in a gross inequity to the State which warrants exception relief.

[Decision and Order]

On July 25, 1975 the State of Oregon (the State) filed an Application for Exception from the Mandatory Petroleum Pricing Regulations with the Office of Exceptions and Appeals of the Federal Energy Administration. That request, if granted, would permit resellers and retailers of motor gasoline in the State to increase their selling prices to reflect a one cent per gallon increase in the state "license tax" on motor gasoline (the tax) which becomes effective on October 1, 1975.

The Federal Energy Administration, having considered the State of Oregon's Application for Exception, has determined that:

(a) Under the provisions of the statutes of the State of Oregon (ORS 319.020), "dealers"[1] which constitute the first level of distribution of motor gasoline in the State are required to pay a license tax of seven cents for each gallon of motor gasoline which they use or sell to resellers or retailers in the State. Resellers and retailers other than dealers have no obligation to collect the tax or to remit any funds to the State. The State has utilized this form of gasoline tax for over fifty years to generate revenues for the construction and maintenance of its highway system. Throughout this period the amount of the license tax has generally been included by dealers and by other resellers and retailers of motor gasoline in their price for motor gasoline. The State legislature has recently passed a statute which provides that as of October 1, 1975 the license tax for motor gasoline sold or used within the State would increase from seven to eight cents per gallon.[2]

(b) Dealers who are responsible for paying the Oregon license tax on motor gasoline are classified as refiners, resellers, reseller-retailers or retailers as those terms are defined in 10 CFR 212.31 and are therefore subject to the provisions of the FEA Mandatory Petroleum Price Regulations. The provisions of 10 CFR 212.82 and 212.93 generally provide that a seller of a covered petroleum product may not charge a price for that product which exceeds the weighted average price at which that item was lawfully priced by the seller in transactions with the class of purchaser involved on May 15, 1973 plus an amount which reflects on a dollar-for-dollar basis the increased product costs of that item. Section 212.87(c)(4) permits refiners to pass through increased costs of marketing motor gasoline by an amount not to exceed one cent per gallon for retail sales and one half cent per gallon for all other sales. Section 212.93(b)(1) also permits resellers of motor gasoline which sold less than 100 million gallons in 1973 and retailers of that product to charge one-half cent per gallon and one cent per gallon respectively to reflect non-product cost increases which they have incurred after May 15, 1973. On the basis of the provisions of Section 212.93 as clarified by Ruling 1974, Fed. Energy Guidelines, ¶ 16,014 (39 Fed. Reg. 5310; February 12, 1974) the FEA previously determined that resellers and retailers of motor gasoline may increase the selling price of the product

[1] In ORS 319.010 the term "dealer" is defined as ". . . any person who:

(a) Imports or causes to be imported motor vehicle fuels or aircraft fuels for sale, use or distribution in, and after the same reaches the State of Oregon, but "dealer" does not include any person who imports into this state motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer under ORS 319.010 to 319.430 and who assumes liability for the payment of the applicable license tax to this state; or

(b) Produces, refines, manufactures or compounds motor vehicle fuels or aircraft fuels in the State of Oregon for use, distribution or sale in this state; or

(c) Acquires in this state for sale, use or distribution in this state motor vehicle fuels or aircraft fuels with respect to which there has been no license tax previously incurred.

[2] The State indicates that the Governor has refrained from signing a bill which would allow the tax to be imposed pending resolution of this proceeding by the FEA.

which they sell to reflect a tax increase only if: (i) the tax is imposed on the purchaser and merely collected by the seller as agent for the State; (ii) the tax is imposed in lieu of a sales tax; and (iii) the tax has no extra-territorial effect. See *State of Oregon,* 2 FEA ¶ 80,616 (June 20, 1975).

(c) The tax specified in ORS 319.020 does not conform to the criteria discussed above since the Oregon statute does not require as a matter of law that dealers, resellers and retailers increase their selling price to reflect the tax paid. Thus the tax is not "imposed on the purchasers" by the statute and is instead considered under the FEA regulations to be a cost of doing business rather than a product cost. *See State of Oregon, supra.* Consequently, the Oregon dealers who are subject to the tax increase are not permitted under FEA regulations to pass through to their customers the one cent per gallon increase which would go into effect on October 1, 1975.

(d) In its Application for Exception the State of Oregon contends that the inability of dealers in the State to pass through the increased license tax will cause the State and the dealers on which this tax increase is imposed to incur a serious hardship and gross inequity which warrants exception relief. The State asserts that even though the tax is formally classified as a license tax, the State has always intended the financial burden of the tax be passed through to the ultimate consumer in order to achieve an equitable allocation among all users of the costs of maintaining the State highway systems. The State further asserts that the one cent per gallon tax increase is expected to raise over $26 million in revenues during the next two years and that dealers responsible for remitting these revenues to the State cannot themselves absorb the cost of this increase without incurring serious financial hardships which will unduly decrease their profitability and threaten to undermine their continued financial viability.

(e) There is considerable merit to the position which the State sets forth in this proceeding. As stated above, the revenues which the State receives from the tax are used solely to maintain public highways. The legislative history of the pending tax increase also indicates that the increase is part of an overall arrangement in which the State is attempting to fairly apportion the increased cost of maintaining its highway system on the basis of relative use. This policy, which is certainly compatible with the nation's federal energy objectives, cannot be effectuated within the scope of the state tax arrangement unless the tax increase may be passed through to the ultimate consumer of motor gasoline. As indicated above, the FEA Regulations prevent dealers in the state from implementing the tax in a manner which would effectuate the policy objectives underlying the tax measure only because of the technical form in which the tax is imposed. There is no practical difference between a sales tax imposed directly on ultimate purchasers and the tax increase under consideration here. In addition, the method by which the State of Oregon plans to impose the tax increase is derived from a system of gasoline taxation which the State has used for over fifty years. In view of these considerations and the important policy objectives which the State wishes to further through the tax we have concluded that the fiscal and practical burden to the State from either foregoing the tax increase or revamping a tax structure which it has maintained for over fifty years so strongly outweighs any possible benefit that would result from the continued application of the FEA Regulations in this situation as to result in a gross inequity. *Cf. Gulf Energy and Development Corp.,* 2 FEA ¶ 80,516 (January 20, 1975); *Pasco, Inc.,* 2 FEA ¶ 83,021 (January 20, 1975); *Macmillan Ring-Free Oil Co.,* 1 FEA ¶ 20,733 (December 11, 1974). *Getty Oil Co., Skelly Oil Co.,* 2 FEA ¶ 83,041 (February 11, 1975). The State should therefore be granted appropriate exception relief which permits it to effectuate the objectives which it seeks to further through the tax increase.

It Is Therefore Ordered That:

(1) The Application for Exception from the provisions of 10 CFR 212.82

and 10 CFR 212.93 submitted by the State of Oregon be and hereby is granted as set forth below:

(2) Notwithstanding any contrary provisions of 10 CFR 212.82 and 212.93, any refiner, reseller or retailer of motor gasoline doing business in the State of Oregon may, beginning October 1, 1975, increase its prices for motor gasoline by an amount not to exceed one cent per gallon above its maximum permissible prices for that product in order to pass through where appropriate the increase in the license tax on motor gasoline which is imposed pursuant to the 1975 amendment to ORS 319.020.

(3) In accordance with the provisions of 10 CFR, Part 205, an aggrieved party may file an appeal from this Decision and Order with the Federal Energy Administration. The provisions of 10 CFR, Part 205, Subpart H, set forth the procedures and criteria which govern the filing and determination of any such appeal.

3021 STATE CAPITOL
SACRAMENTO 95814
(916) 445-3057

8011 STATE BUILDING
107 SOUTH BROADWAY
LOS ANGELES 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California

March 1, 1977

Honorable Mike Cullen
Assembly Chamber

<u>Local Gas Tax - #2205</u>

Dear Mr. Cullen:

Pursuant to your request, we have prepared the enclosed opinion concerning, among other things, whether or not the Legislature may authorize counties and cities to impose a local gas tax and use the revenues derived therefrom for general purposes.

The California Attorney General has expressed a contrary view to our opinion (27 Ops. Atty. Gen. 15, 20; 47 Ops. Atty. Gen. 28).

We have enclosed a copy of the opinions* of the Attorney General for your consideration.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Jimmie Wing
Jimmie Wing
Deputy Legislative Counsel

JW:cmr

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* Article XXVI of the State Constitution referred to in the opinions was amended and renumbered as Article XIX by the adoption of Proposition 14 (Res. Ch. 5, Stats. 1976) at the June 8, 1976 Primary Election.

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Legislative Counsel of California

BION M. GREGORY

Sacramento, California

March 1, 1977

Honorable Mike Cullen
Assembly Chamber

Local Gas Tax - #2205

Dear Mr. Cullen:

You have asked five questions, which are separately stated and considered below, regarding a local gas tax (i.e., an excise tax on the privilege of selling or using motor vehicle fuel).

QUESTION NO. 1

Could counties and cities be authorized by statute to impose a local gas tax and to use the revenues derived therefrom for general purposes (i.e., other than highway and guideway purposes)?

OPINION NO. 1

Counties and cities could be authorized by statute to impose a local gas tax and to use the revenues derived therefrom for general purposes (i.e., for other than highway and guideway purposes).

ANALYSIS NO. 1

The problems raised by this question are caused primarily by the language in Section 1 of Article XIX of the State Constitution, which requires revenues from taxes imposed by the state on motor vehicle fuels to be used only for the following:[1]

"SECTION 1. * * *

"(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.

"(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services."

The portion of the above provision relating to street and highway purposes was formerly contained in Section 1 of Article XXVI, which was added to the State Constitution

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1 Proposition 11 (Res. Ch. 108, Stats. 1975) of the June 8, 1976, Primary Election was adopted to add Section 8 to Article XIX to authorize real property acquired for highway or guideway purposes by the expenditure of highway users tax revenues by an entity other than the state, but no longer required for such purposes, to be used for local public park and recreational purposes (see Sec. 54231, Gov. C.).

by Proposition 3 on the ballot for the General Election held on November 8, 1938. Both the proponents and opponents of the measure made it clear that the primary purpose of Proposition 3 was to prevent diversion of gas tax revenues to purposes other than those provided for by law at the time Article XXVI was adopted.

William F. Knowland, then a State Senator from the Sixteenth District, was the author of Article XXVI (S.C.A. 28, 1937 Reg. Sess.; Res. Ch. 141, Stats. 1937), and his argument in favor of Proposition 3 stated, in part (Part I, Ballot Pamphlet, p. 8):

> "This proposed constitutional amendment, when adopted by the voters, will effectively and permanently prevent diversion of gasoline tax funds to purposes <u>other than those now provided by law</u>.
>
> "California motorists have been threatened many times with the misuse of diversion of moneys paid by them for the maintenance and development of routes for motor travel and for the support of the Department of Motor Vehicles. The purpose of this amendment is forever to end such threats.
>
> "The measure has been carefully drawn and is eminently fair. It makes no changes in existing law, nor does it change any of the present uses for which gasoline tax and other highway fund revenues are expended. . . .
>
> "Despite the seemingly large amounts of money spent annually for street and highway maintenance and development, the demands of constantly growing traffic make it imperative that the gasoline tax and registration fees be protected in every possible manner against diversion for nonhighway purposes. In other states where 'diversion' has taken place, it has been ruinous to the proper development of adequate street and highway facilities. . . ."

On the following page, the argument against this measure also recognized this primary purpose:

> "The purpose of this amendment is to prevent effectively and permanently the diversion of motor vehicle fuel taxes and motor vehicle registration license fees to purposes <u>other than those now provided by law</u>. This purpose is accomplished under existing laws; and the amendment, therefore, is unnecessary. . . ." (Emphasis added.)

Thus, both the proponents and opponents of Proposition 3 stated that the purpose of the amendment was to prevent diversion of highway user tax revenues.

Proposition 5 on the ballot for the Primary Election held on June 4, 1974, broadened the uses to which highway funds could be employed, and Proposition 14 on the ballot for the Primary Election held on June 8, 1976, amended and renumbered the heading of Article XXVI to Article XIX (see the 55th clause, at p. 69; see also Prop. 11[2] in the same ballot pamphlet). However, none of the arguments on these measures give any indication that gas tax revenues may be used for any purpose other than those specified in what is now designated as Article XIX of the State Constitution.

Thus, we think the purpose of the framers of Article XIX and its predecessor provision was to restrict the use of gas tax revenues to the stated purposes contained therein. However, a general rule with respect to arguments made to the voters on ballot propositions was expressed in the following manner in <u>Cal. Inst. of Technology</u> v. <u>Johnson</u>, 55 Cal. App. 2d 856, 859, quoting from <u>Fay</u> v. <u>District Court of Appeal</u>, 200 Cal. 522, 537:

> "'Such aids to the interpretation of a written document while available to the courts are not at all to be considered as controlling, since whatever may have been the intent of the proponents of a particular change in a law must at the last analysis be derived from the language of the proposed enactment purporting to effect such change.'"

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2 See footnote 1.

In this regard, we note that the restrictions on the expenditure of gas tax revenues set forth earlier in subdivisions (a) and (b) of Section 1 of Article XIX by the express terms of the section apply only to revenues from taxes _imposed by the State of California_. Such section starts out in the following manner:

> "SECTION 1. Revenues from taxes _imposed by the state_ on motor vehicle fuels for use in motor vehicles upon public streets and highways ... shall be used for the following purposes ... ." (Emphasis added.)

Former Section 1 of Article XXVI contained similar language restricting the use of revenues from taxes _imposed by the state_ on gasoline.

The Legislature may authorize local governments to impose taxes for local purposes (Sec. 24, Art. XIII, Cal. Const.; _McCabe_ v. _Carpenter_, 102 Cal. 469, 471; _Escondido_ v. _Escondido Lumber etc. Co._, 8 Cal. App. 435, 439). Counties are legal subdivisions of the state for purposes of government, but they have also been declared to be public corporations or quasi corporations (Sec. 1, Art. XI, Cal. Const.; Secs. 460, 23000, 23002, Gov. C.; _People ex rel Younger_ v. _County of El Dorado_, 5 Cal. 3d 480, 491, fn. 12; _Pitchess_ v. _Superior Court_, 2 Cal. App. 3d 653, 656). On the other hand, cities are not political subdivisions of the state, but are distinct individual entities and exist in the main for local government (_Blum_ v. _City & County of San Francisco_, 200 Cal. App. 2d 639, 643; _Otis_ v. _City of Los Angeles_, 52 Cal. App. 2d 605, 612).

Thus, we think that, since counties and cities are distinct entities of government, a tax imposed by a county or city would not be deemed to be a tax imposed by the state.

Presently, counties and cities are imposing sales and use taxes for the privilege of selling and using motor vehicle fuel (Secs. 6357, 7201, 7202, 7203, R.& T.C.). However, this factor standing alone would not necessarily preclude the imposition of a second tax by the counties and cities with respect to the same privilege (see _Fox Etc. Corp._ v. _City of Bakersfield_, 36 Cal. 2d 136, 141), for the courts have already recognized that motor vehicle fuel is a large, separate industry which justifies its separate taxation (_Roth Drug, Inc._ v. _Johnson_, 13 Cal. App. 2d 720, 739).

Furthermore, in construing the State Constitution, the California Supreme Court, in Methodist Hosp. of Sacramento v. Saylor, 5 Cal. 3d 685, 691, stated that:

> "Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. In other words, 'we do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.'
>
> "Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations [imposed by the Constitution] are to be construed strictly, and are not to be extended to include matters not covered by the language used.'" (Citations omitted.)

That being so, in our opinion, Article XIX is to be construed to restrict only the use of gas tax imposed by the state and not to such a tax imposed by the counties and cities.

Such a construction of Article XIX is supported by statutory rules of construction. Such rules are applicable in construing the Constitution (McMillan v. Siemon, 36 Cal. App. 2d 721, 726).

In construing a statute, significance should be given, if possible, to every word, phrase, sentence, and part of an act (People v. Western Air Lines, Inc., 42 Cal. 2d 621, 638; hearing denied, 99 L. Ed. 677). It is presumed that every word, phrase, and provision employed in a statute was intended to have some meaning and to perform some useful office. Any construction should be avoided which implies that the Legislature was ignorant of the meaning of the language so employed or that it used words in vain. (Prager

v. Isreal, 15 Cal. 2d 89, 93; People v. Kozden, 36 Cal. App. 3d 918, 922.) No word, phrase, or sentence should be considered unnecessary or surplusage (County of Los Angeles v. Emme, 42 Cal. App. 2d 239, 242). Thus, a court is prohibited from such a construction as will omit a portion of a statute (Sec. 1858, C.C.P.; REA Enterprises v. California Coastal Zone Conservation Com., 52 Cal. App. 3d 596, 610).

Therefore, in order to give full effect to the words "imposed by the state," Article XIX cannot be construed to apply to a gas tax imposed by a county or a city. To do so, would mean that no significance would be given those words. Such a construction would be contrary to the above statutory rules of construction.

Thus, it is our opinion that Article XIX applies only to a gas tax imposed by the state, and that counties and cities could be authorized by statute to impose a local gas tax and to use the revenues derived therefrom for general purposes (i.e., for other than highway and guideway purposes).

QUESTION NO. 2

Assuming legislation were enacted to authorize only counties to impose a local gas tax, could the Legislature require each county to transfer a portion of its local gas tax revenues to the cities within the county in accordance with a specified formula?

OPINION NO. 2

Assuming legislation were enacted to authorize only counties to impose a local gas tax, the Legislature could require each county to transfer a portion of its local gas tax revenues to the cities within the county in accordance with a specified formula if the revenues transferred to the cities are to be used for a public purpose of the county.

ANALYSIS NO. 2

The legislative power of the state is vested in the Legislature, and it is competent for the Legislature to exercise all legislative power not forbidden by the State Constitution, not delegated to the United States, or prohibited by the Federal Constitution (Sec. 1, Art. IV, Cal. Const.; Collins v. Riley, 24 Cal. 2d 912, 916).

A limitation on the power of the Legislature to act is Section 6 of Article XVI of the State Constitution, which provides, in pertinent part, that:

> "SEC. 6. The Legislature shall have no power to ... make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever ... ."

Thus, the Legislature is prohibited from authorizing the gift of public funds. Such prohibition also extends to a contribution from one local agency to another for a purely local purpose of the donee agency (Santa Barbara Etc. Agency v. All Persons, 47 Cal. 2d 699, 707, revd. on other grounds, 2 L. Ed. 2d 1313). Such prohibition does not apply when adequate consideration is given for the property or a valid public purpose of the donor agency is served by the transfer (see Allen v. Hussey, 101 Cal. App. 2d 457; Federated Etc. Properties v. State of Cal., 82 Cal. App. 2d 893; County of Alameda v. Janssen, 16 Cal. 2d 276; Santa Barbara Etc. Agency v. All Persons, supra; Golden Gate Bridge and Highway District v. Leuhring, 4 Cal. App. 3d 204, 208).

For example, each county is imposing a 1/4 percent sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law throughout the county, including the cities therein (Secs. 7201, 7202, 7203, R.& T.C.). The revenues from that 1/4 percent tax are deposited in a local transportation fund and are allocated by the transportation planning agency having jurisdiction over the county to various entities for various transportation purposes in the county (Secs. 29530, 29531, 29532, Gov. C.; Secs. 99203, 99231, 99233 et seq., 99400, P.U.C.). However, the allocation of those revenues for transportation purposes is deemed to serve a public purpose of the county (subd. (c), Sec. 99220, P.U.C.).

Therefore, any funds transferred by a county to a city therein would have to be for a public purpose of the county.

Accordingly, it is our opinion that, assuming legislation were enacted to authorize only counties to impose a local gas tax, the Legislature could require each county to transfer a portion of its local gas tax revenues to the cities within the county in accordance with a specified formula if the revenues transferred to the cities are to be used for a public purpose of the county.

QUESTION NO. 3

May cities impose a local gas tax in the absence of a statute specifically granting them authority to do so?

OPINION NO. 3

Even in the absence of a statute specifically granting cities the authority to impose a local gas tax, a general law city may impose such a tax as a business license tax and, if not prohibited by its charter, a charter city[3] may also impose a local gas tax.

ANALYSIS NO. 3

Presently, the state is imposing a gas tax at the rate of 7 cents a gallon (Secs. 7351, 8651, R.& T.C.). However, there is no statement in the statutes that, by the imposition of this tax, the state has preempted this field of taxation.

This is to be contrasted with specific statutory preemption by the state in the sales and use taxes (Sec. 2, Ch. 1265, Stats. 1968; Century Plaza Hotel Co. v. City of Los Angeles, 7 Cal. App. 3d 616, 624), in vehicle license fees (Sec. 10758, R.& T.C.; see Bigge Crane Rental Co. v. County of Alameda, 7 Cal. 3d 414, 416-417), in taxes on insurers with specified exceptions (Sec. 28, Art. XIII, Cal. Const.; Secs. 12102, 12204, R.& T.C.; City of San Jose v. Donohue, 51 Cal. App. 3d 40, 46), in personal income tax (Sec. 17041.5, R.& T.C.), in taxes on banks with specified exceptions (Sec. 27, Art. XIII, Cal. Const.; Sec. 23182, R.& T.C.; United States Nat. Bank v. County of Los Angeles, 234 Cal. App. 2d 195, 199), in cigarette tax with specified exceptions (Sec. 30111, R.& T.C.), and in the alcoholic beverage tax (Sec. 32010, R.& T.C.); Century Plaza Hotel Co. v. City of Los Angeles, supra, 622-623).

In other words, where the power of taxation has been lodged in the state to the exclusion of municipalities and other entities of that character, it has customarily been done by specific language expressive of such purposes (Ainsworth v. Bryant, 34 Cal. 2d 465, 472).

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3 For purposes of this opinion, a chartered city includes a chartered city and county (subd. (b), Sec. 6, Art. XI, Cal. Const.; Dineen v. San Francisco, 38 Cal. App. 2d 486, 490).

Therefore, in the absence of a statutory preemption in the field of gas taxation and especially in view of the above statutory preemption by the state in other fields of taxation, it is our opinion that the state has not preempted this field of taxation.

With respect to cities, there is a distinction between general law cities and chartered cities (Secs. 34101, 34102, Gov. C.; Ex Parte Braun, 141 Cal. 204, 207-208).

A general law city has only those powers expressly conferred upon it by the Legislature, together with such powers as are necessarily incident to those expressly granted or essential to the declared object and purposes of the municipal corporation. The powers of such a city are strictly construed so that any fair, reasonable doubt concerning the exercise of a power is resolved against the city. (Irwin v. City of Manhattan Beach, 65 Cal. 2d 13, 20-21.)

Therefore, general law cities have only such taxation power as has been granted to them by the State Constitution or by statutes (Sec. 24, Art. XIII, Cal. Const.; Myers v. City Council of Pismo Beach, 241 Cal. App. 2d 237, 240-241).

General law cities have the power to license, either for revenue or regulation, every kind of lawful business transacted in the city (Sec. 37101, Gov. C.; People v. M.V. Nurseries, Inc., 40 Cal. App. 3d Supp. 1, 2). A license tax upon the privilege or right to carry on a particular trade within the city is not a tax upon property within the meaning of Section 1 of Article XIII of the State Constitution (Brunton v. Superior Court, 20 Cal. 2d, 202, 207; Los Angeles v. Los Angeles Etc. Co., 132 Cal. 765, 767).

The power of a municipality to classify for purpose of taxation is broad. The classification will be sustained if the burden of the license tax falls equally upon all members of a class, though other classes have lighter burdens or are wholly exempt, provided that the classification is reasonable, based on substantial differences between the pursuits separately grouped and is not arbitrary. (City of Los Angeles v. Crawshaw Mortgage & Inv. Co., 51 Cal. App. 3d 696, 699-700).

Therefore, the authority of a general law city to impose a business license tax is sufficiently broad so that a general law city may impose a local gas tax.

Thus, in our opinion a general law city may impose a local gas tax as a business license tax.

With respect to the powers of a chartered city, Section 5 of Article XI of the State Constitution provides, in pertinent part, that:

> "SEC. 5. (a) It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.
>
> * * *"

Thus, a city operating under a charter containing "home rule" provisions is empowered to exercise full control over subject matters that are exclusively its municipal affairs, unaffected by general laws on the same subject matters and subject only to limitations found in the Constitution and the city charter (Rivera v. City of Fresno, 6 Cal. 3d 132, 135; Professional Fire Fighters, Inc. v. City of Los Angeles, 60 Cal. 2d 276, 292-293).

"Municipal affairs" refer to the internal business affairs of a municipality (Griffin v. City of Los Angeles, 134 Cal. App. 763, 772). The term has indistinct outlines and no precise, inflexible definition is available (Century Plaza Hotel Co. v. City of Los Angeles, supra, 620). Furthermore, the constitutional concept of municipal affairs is not a fixed or static quantity, but changes with the changing conditions upon which it is to operate. What may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state. (Pac. Tel. & Tel. Co. v. City & County of S.F., 51 Cal. 2d 766, 771.)

Taxation for city purposes is a municipal affair (City of Grass Valley v. Walkinshaw, 34 Cal. 2d 595, 599; West Coast Adver. Co. v. San Francisco, 14 Cal. 2d 516, 524).

Thus, a municipal taxing scheme is valid unless preempted by state law or prohibited by constitutional principles (City of Los Angeles v. A.E.C. Los Angeles, 33 Cal. App. 3d 933, 939).

Furthermore, where the charter is silent, the city may exercise powers conferred upon it by general law provided such general powers are not inconsistent with those granted by its charter (Hubbard v. City of San Diego, 55 Cal. App. 3d 380, 389).

Thus, in our opinion, a chartered city, if not prohibited by its charter, may impose a local gas tax, although it need not be imposed in the form of a business license tax.

However, the cities may not impose a local gas tax in the form of a sales and use tax, in view of the state preemption in that field of taxation (Sec. 2, Ch. 1265, Stats. 1968; Century Plaza Hotel Co. v. City of Los Angeles, supra, 624).

In summary, it is our opinion that, even in the absence of a statute specifically granting cities the authority to impose a local gas tax, a general law city may impose such a tax as a business license tax and, if not prohibited by its charter, a chartered city may also impose a local gas tax.

QUESTION NO. 4

Would a statute be valid which would preclude general law cities and chartered cities from imposing a local gas tax?

OPINION NO. 4

A statute would be valid which would preclude general law cities and chartered cities from imposing a local gas tax.

ANALYSIS NO. 4

As indicated in Analysis No. 2, the legislative power of the state is vested in the Legislature, and it is competent for the Legislature to exercise all legislative power not forbidden by the State Constitution, not delegated to the United States, or prohibited by the Federal Constitution. The power to legislate includes, by necessary implication, the power to amend existing legislation, since

the amendment of a legislative act is itself a legislative act (Johnson v. City of Claremont, 49 Cal. 2d 826, 834-835; City of Sausalito v. County of Marin, 12 Cal. App. 3d 550, 563-564).

The taxing power of general law cities, as indicated in Analysis No. 3, is granted by statute pursuant to Section 24 of Article XIII of the State Constitution (Myers v. City Council of Pismo Beach, supra, 240-241). The power of general law cities to impose any particular tax continues in existence only so long as the legislative authorization therefore continues to be a part of the law (see Ex Parte Pfirrmann, 134 Cal. 143, 148-149).

Thus, in our opinion a statute could be enacted, to preclude general law cities from imposing a local gas tax.

As indicated in Analysis No. 3, the imposition of a local gas tax by a chartered city for revenue purposes is a municipal affair. However, what may at one time have been a matter of local concern may at a later time become a matter of state concern controlled by the general laws of the state.

Whether the subject matter under discussion is of municipal or statewide concern, it is necessary for the courts to decide under the facts of each case. This question must be determined from the legislative purpose in each individual instance. (Professional Fire Fighters, Inc. v. City of Los Angeles, supra, 294.) Thus, the fact that the Legislature has attempted to deal with a particular subject on a statewide basis is not determinative of the issue as between state and municipal affairs, for the Legislature is empowered neither to determine what constitutes a municipal affair nor to change such an affair into a matter of statewide concern (Bishop v. City of San Jose, 1 Cal. 3d 56, 63).

However, when there is a doubt as to whether an attempted regulation relates to a municipal or to a state matter, or if it be the mixed concern of both, the doubt must be resolved in favor of the legislative authority of the state (People v. Moore, 229 Cal. App. 2d 221, 225).

Presently, a substantial portion of the tax imposed by the state on gasoline is subvented to the counties and cities for highway and guideway purposes (Secs. 2104, 2106,

2107, S.& H.C.). Hence, we are not considering a mere prohibition by the Legislature of local legislation on a particular field without any affirmative act of the Legislature occupying the field. Such a prohibition would be unconstitutional. (Ex Parte Daniels, 183 Cal. 636, 641; see County of Alameda v. City and County of San Francisco, 19 Cal. App. 3d 750, 757 fn. 3).

Moreover, as indicated in Analysis No. 3, the state has preempted various fields of taxation.

Any proposed legislation to preempt for the state the field of gas tax would be strengthened if it included a statement of findings and declaration by the Legislature as to justify the preemption (see, e.g., Sec. 2, Ch. 1265, Stats. 1968). Such findings and declarations are entitled to great weight (People ex rel. Younger v. County of El Dorado, supra, 493). Moreover, if the validity of a statute depends on the existence of a certain state of facts, it will be presumed that the Legislature has investigated and ascertained the existence of that state of facts before passing the law (City of Ojai v. Chaffee, 60 Cal. App. 2d 54, 61).

Thus, by preempting the field gas taxation, it is our opinion that a statute could be enacted to preclude chartered cities from imposing a local gas tax.

In summary, it is our opinion that a statute would be valid which would preclude general law cities and chartered cities from imposing a local gas tax.

QUESTION NO. 5

If legislation were enacted to authorize counties and cities to impose a local gas tax, could cities be prohibited from imposing a local gas tax rate at a rate higher than that authorized in the legislation?

OPINION NO. 5

If legislation were enacted to authorize counties and cities to impose a local gas tax, such legislation could prohibit cities from imposing a local gas tax at a rate higher than that authorized in the legislation.

ANALYSIS NO. 5

As indicated in Analysis No. 2, the Legislature may exercise all legislative power not forbidden by the State Constitution, not delegated to the United States, or prohibited by the Federal Constitution. Furthermore, as indicated in Opinion No. 4, a statute would be valid which would preclude general law cities and chartered cities from imposing a local gas tax.

That being so, the Legislature, in authorizing cities to impose a local gas tax, could limit that authority.

Accordingly, it is our opinion that, if legislation were enacted to authorize counties and cities to impose a local gas tax, such legislation could prohibit cities from imposing gas tax at a rate higher than that authorized in the legislation.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Jimmie Wing
Jimmie Wing
Deputy Legislative Counsel

JW:dc

ATTORNEY GENERAL OPINION NO. 55-175 DATED JANUARY 17, 1956

Opinion No. 55-175—January 17, 1956

SUBJECT: SAN FRANCISCO BAY AREA RAPID TRANSIT COMMISSION —Validity of statute creating, with provision that majority vote may bind all communities and also apply to taxation of property and issuance of bonds; authority of district to delegate management to policy forming board and to place operation of transit system in hands of private contractor; possibility of financing through motor vehicle license fees, motor fuel taxes, state contributions, bridge toll revenues; possibility of transfer of title of Bay Bridge to district; limitations on amounts of local bonds and taxes; and allocation of financial burden between cities and counties on differential basis all discussed.

Requested by: SAN FRANCISCO BAY AREA RAPID TRANSIT COMMISSION.

Opinion by: EDMUND G. BROWN, Attorney General.
Ralph W. Scott and Ernest P. Goodman, Deputies.

The San Francisco Bay Area Rapid Transit Commission has raised the following questions:

1.

a. Can a statutory enabling act provide for the formation of a rapid transit district consisting of nine Bay Area counties, or designated fractions of counties, wherein a straight majority of affirmative votes within the district as a whole makes the authority of the district binding upon all communities within the district?

b. Can the same system of voting apply to taxation of property and to issuance of district bonds to provide funds for construction or operation of the rapid transit system?

c. Can the district be empowered to delegate the management and operation of a transit system, including expenditures for construction and improvements, to a policy-forming board and to officers appointed by that board?

d. Can the district be empowered to place the operation of the transit system in the hands of a private contractor, and can the private contractor be granted immunity from taxation on the transit property?

2.

a. Can vehicle license fees or taxes on motor fuel be levied within the district to provide funds for the transit system?

b. What changes, constitutional or statutory, would be required to permit application of revenues for rapid transit purposes from 1) State motor vehicle fuel taxes and 2) "in lieu" taxes?

c. Can the State contribute toward the construction or operation of a Bay Area rapid transit system, using either general funds or funds collected specifically for transit purposes?

d. Can the state apply bridge-toll revenues to rapid transit purposes?

e. Can the transfer of title to the San Francisco Bay Bridge be made to the transit district by means of the district statute?

3.

a. To what extent are the amounts and terms of bonds and of taxes to service bonds of the district limited by existing law or city or county charter provisions?

b. Can the financial burdens of the transit system be allocated to cities or counties within the district on a differential basis specified in the district statute, without separate vote of the communities affected?

Our conclusions may be summarized as follows:

Question 1(a) warrants an affirmative reply.

Question 1(b) also warrants an affirmative reply, provided that the obligation of the district to meet principal and interest payments on general obligation bonds could not be impaired by any limitation on the power of taxation.

The answer to question 1(c) is in the affirmative. The district statute creating an executive officer or committee (even though designated a "policy-forming board") should carefully define the authority of the officer or committee in order to avoid a conflict with the district board of directors.

The first part of question 1(d) warrants an affirmative reply, provided the district maintains stringent control over its facilities and the rates and charges imposed on the public for their use. In reply to the second half of question 1(d), the private contractor would not be immune from taxation on any possessory interest in the transit system which he might acquire pursuant to contract with the district.

With respect to question 2(a), we have serious doubts as to the propriety of a tax on motor vehicle fuel and on vehicle registration and license fees to be used for rapid transit purposes in the absence of the constitutional and statutory amendments outlined in our answer to question 2(b); namely, amendment of article XXVI of the California Constitution and sections 8351, *et seq.*, and 11001, *et seq.* of the Revenue and Taxation Code.

Our answer to question 2(c) is that it would be permissible for the State to contribute funds to be used for rapid transit purposes pursuant to a statute providing for the State-wide subvention of rapid transit districts.

Our answer to question 2(d) is also in the affirmative, subject to the constitutional and statutory restrictions on the impairment of the obligation of the bondholder's contracts, and in the case of the San Francisco-Oakland Bay Bridge, the restrictions imposed by federal and state statutory provisions with respect to the use of tolls from that bridge.

Our answer to question 2(e) is in the affirmative, with the qualification that the concept of "transfer of title" when applied to property such as the San Francisco-Oakland Bay Bridge from one public agency to another really involves only a transfer of management.

Answering question 3(a), there are no current limitations on the amount and terms of bonds which might be issued by a rapid transit district or the amount of taxes to service such bonds, other than those limitations provided in the Special Assessment Investigation, Limitation and Majority Protest Act of 1931.

Question 3(b) is answered in the ffirmative.

ANALYSIS

1(a). Can a statutory enabling act provide for the formation of a rapid transit district consisting of nine Bay Area counties, or designated fractions of counties, wherein a straight majority of affirmative votes within the district as a whole makes the authority of the district binding upon all communities within the district?

It is well established in this State that the Legislature has plenary power, limited only by the provisions of the State Constitution. As said in *Fitts* v. *Superior Court,* 6 Cal. 2d 230, at page 234, the courts "do not look to the Constitution to determine whether the legislature is authorized to do an act, but only to see if it is prohibited."

We are not aware of any provision of the California Constitution which prohibits the Legislature from authorizing the formation of a special rapid transit district wherein a majority of affirmative votes within a district as a whole would be binding upon all of the area comprising the district. In this respect the power of the Legislature is explained by *In re Madera Irrigation District,* 92 Cal. 296, at page 308, where the court said:

> "In providing for the welfare of the state and its several parts, the legislature may pass laws affecting the people of the entire state, or when not restrained by constitutional provisions, affecting only limited portions of the state. It may make special laws relating only to special districts, or it may legislate directly upon local districts, or it may intrust such legislation to subordinate bodies of a public character. It may create municipal organizations or agencies within the several counties, or it may avail itself of the county or other municipal organizations for the purposes of such legislation, or it may create new districts embracing more than one county, or parts of several counties, and may delegate to such organizations a part of its legislative power to be exercised within the boundaries of said organized districts, and may vest them with certain powers of local legislation, in respect to which the parties interested may be supposed more competent to judge of their needs than the central authority. . . ."

Many instances can be cited where utility districts comprising more than one county have been authorized by the Legislature. Thus, the San Francisco Bay Area Metropolitan Rapid Transit District Act (Calif. Stats. 1949, ch. 1239, as amended) provides enabling legislation for the creation of such a district within nine counties of the Bay Area. Here, the formation of the district is predicated on an election and an affirmative vote within certain designated areas. Another example of such enabling legislation is to be found in The Local Hospital District Law (Health & Saf. Code secs. 32000 *et seq.*) pursuant to which the formation of such a district is predicated upon the favorable vote of a majority within the proposed district (cf., *Paso Robles etc. Hospital District* v. *Negley,* 29 Cal. 2d 203). Reference is also had to the provisions of sections 9000 *et seq.* of the Public Resources Code, providing for the formation of soil conservation districts, com-

prising lands in one or more counties (Pub. Res. Code sec. 9063) upon the majority of votes cast by the landowners of the proposed district (Pub. Res. Code secs. 9140 and 9144).

Although an enabling statute of the type here proposed might be classified as a special, rather than a general, law, we do not think such legislation would contravene the provisions of article IV, section 25 of the California Constitution for the reason that a general law could not be made applicable because the physical characteristics peculiar to the area are not State-wide (*cf., Alameda etc. Water District* v. *Stanley,* 121 Cal. App. 2d 308, 314-315).

1(b). Can the same system of voting apply to taxation of property and to issuance of district bonds to provide funds for construction or operation of the rapid transit system?

What has been said hereinabove with respect to the creation of a rapid transit district is equally applicable to the power of the Legislature to provide by statute for the same system of majority voting by which general obligation bonds may be authorized and issued to carry out the purposes of the district; namely, the construction and operation of a rapid transit system. The development of such a system is a State purpose (*cf., Golden Gate Bridge etc. District* v. *Felt,* 214 Cal. 308, 321; *Wheatley* v. *Superior Court,* 207 Cal. 722, 726). In furtherance of such a program the Legislature may prescribe the method of taxing property within the district to raise money sufficient in amount to discharge district functions and obligations including the payment of principal and interest on such bonds (*cf., Golden Gate Bridge etc. District* v. *Felt,* 214 Cal. 308, 320-324; *In re Orosi Public Utility District,* 196 Cal. 43, 58; *Joint Highway District No. 13* v. *Hinman,* 220 Cal. 578; *Paso Robles Hospital District* v. *Negley,* 29 Cal. 2d 203, 206; *In re Validation of East Bay etc. Water Bonds of 1925,* 196 Cal. 725). However, if the enabling statute authorized the issuance of general obligation bonds upon the vote of a majority of electors residing within the district, it could not, of course, authorize the electors to vote down the imposition and collection of taxes sufficient in amount to meet the obligations of those bonds without impairing the validity of the contract between the bondholders and the district itself.

1(c). Can the district be empowered to delegate the management and operation of a transit system, including expenditures for construction and improvements, to a policy-forming board and to officers appointed by that board?

It is well established that public officers have no power to delegate discretionary power which has been conferred upon them by statute (*cf.,* 21 Cal. Jur. sec. 63, pp. 881, 882, and cases cited). On the other hand, public officers may appoint agents to discharge ministerial duties and functions.

There is no doubt, however, that a statute authorizing the creation of a rapid transit district could provide for the management and operation of the district and its facilities by an executive officer or executive committee which might be designated as a "policy-forming board" of the district. Such a statute could also delegate policy-forming functions to the executive officer or executive board pro-

vided adequate standards for this policy-forming function were set forth (*Tarpey* v. *McClure,* 190 Cal. 593, 600).

Needless to say, the distribution of power between the district board and the executive officer or committee should be carefully defined in order to avoid conflict as to the relative authority of each.

Even in the absence of specific authorization in the statute itself, a public utility district ordinarily has implied power, arising out of its general powers, to appoint an agent, however designated, to perform ministerial functions under the direction and supervision of the governing board of the district (*cf. Crawford* v. *Imperial Irrigation District,* 200 Cal. 318, 334).

1(d). Can the district be empowered to place the operation of the transit system in the hands of a private contractor, and can the private contractor be granted immunity from taxation on the transit property?

It has been held on many occasions that a public utility district may acquire facilities and then lease them to private persons (*Paso Robles etc. District* v. *Negley,* 29 Cal. 2d 203, 206; *City of Oakland* v. *Williams,* 206 Cal. 315; *Byington* v. *Sacramento Valley etc. Co.,* 170 Cal. 124; *San Francisco* v. *Linares,* 16 Cal. 2d 441; *Lynch* v. *San Francisco,* 3 Cal. 2d 141). However, this power has recently been qualified by the decision in *San Francisco* v. *Ross,* 44 Cal. 2d 52, in which the Supreme Court laid down the rule that eminent domain cannot be invoked by a governmental agency to acquire property for a public purpose where the property is to be turned over to private parties without the reservation of governmental control of the rates and charges for use of the facilities by the public. Therefore, it follows that the rapid transit district could be empowered by statute to lease or otherwise turn the operation of the transit system over to a private contractor provided that the district maintains stringent control over the facilities of the district and its rates and charges imposed on the public for their use. Moreover, it does not appear that article XI, section 13 of the California Constitution which prohibits the Legislature, among other things, from delegating to a private corporation control over municipal or local functions, has any application to districts which serve a State-wide purpose (*Doyle* v. *Jordan,* 200 Cal. 170, 192).

Our answer to the second part of your question 1(d) is in the negative. Article XIII, section 1 of the California Constitution provides that all property which is not exempt either under the provisions of the California Constitution or under the laws of the United States, is subject to taxation according to its value. The possessory interest acquired by a lessee is property within the meaning of article XIII, section 1, and is subject to taxation, according to its value (*Kaiser Co.* v. *Reid,* 30 Cal. 2d 610). The district statute could not exempt the contractor from taxation of the possessory interest he would acquire if the property were leased to him by the district. It might, of course, be possible for the district to enter into a contract with a private person for the management and operation of the district which would not give the private party a possessory interest in the property. In such a case, the private party would have no property interest to be taxed.

2(a). Can vehicle license fees or taxes on motor fuel be levied within the district to provide funds for the transit district?

We entertain serious doubts as to the propriety of such a tax. Article XXVI of the California Constitution requires the proceeds from any tax "imposed by the State" on motor fuel or motor vehicle registration and license fees to be used "exclusively and directly for highway purposes." In order to determine if this section prohibits the levy of a tax on vehicle license fees and motor fuel to provide funds for the transit district, it is necessary to consider first, whether the State would be prohibited by article XXVI from imposing a tax on motor vehicle fuel and vehicle registration and license fees for the development of a rapid transit system, and second, whether the rapid transit district itself could impose such a tax.

Article XXVI defines highway purposes as "The construction, improvement, repair and maintenance of public streets and highways, whether in incorporated or unincorporated territory, for the payment for property, including but not restricted to rights of way, taken or damaged for such purposes and for administrative costs necessarily incurred in connection with the foregoing." In addition, article XXVI authorizes the utilization of a portion of the net revenues from taxes on motor vehicle fuel and motor vehicle registration and license fees for the payment, redemption, discharge, purchase, adjustment and refunding of special assessments or bonds or coupons issued prior to certain dates designated therein for street or highway purposes as set forth in the definition quoted above.

It is our understanding that the primary function of the rapid transit district will be to create facilities for the mass transportation of passengers and that the district will not be directly concerned with the development of improved facilities for the use of automobile traffic. It is our opinion that under such circumstances a State tax to finance the activities of the rapid transit district would be prohibited by article XXVI of the California Constitution since the development of a rapid transit system does not fall under the definition of the term "highway purposes" as used in article XXVI.

It is uncertain whether a tax levied by the rapid transit district itself on motor vehicle fuel or motor vehicle registration or license fees would be regarded as a tax "imposed by the State" in violation of article XXVI. In *Golden Gate Bridge etc. District* v. *Felt,* 214 Cal. 308, it is indicated that a bridge district may be regarded as being organized for State purposes. There is, therefore, a definite possibility that the courts would conclude that a rapid transit district is to be regarded as a State agency for purposes of article XXVI and that the prohibitions contained therein would apply to such a district. If the court concluded that a tax levied by a rapid transit district was a tax "imposed by the State," the prohibition contained in article XXVI would invalidate such a tax. Since this matter is not free from doubt, it would appear undesirable to make the financial structure of the rapid transit district depend on a type of tax which might be declared invalid at some future time.

2(b). What changes, constitutional or statutory, would be required to permit

application of revenues for rapid transit purposes from 1) State motor vehicle fuel taxes and 2) "in lieu" taxes?

Article XXVI might be amended to expressly provide for the allocation of a portion of the revenues from motor fuel taxes and from registration and license fees on motor vehicles for rapid transit purposes. If such an amendment took place, it would be necessary also to amend sections 10701, *et seq.* of the Revenue and Taxation Code relating to the imposition and allocation of "in lieu" taxes and sections 8351, *et seq.* of the Revenue and Taxation Code relating to the allocation of motor vehicle fuel taxes. As an alternative, article XXVI might be amended to provide that nothing contained in that article should be construed to restrict the imposition by a rapid transit district of a tax on motor vehicle fuel and motor vehicle registration and license fees.

2(c). Can the State contribute toward the construction or operation of a Bay Area rapid transit system, using either general funds or funds collected specifically for transit purposes?

It is our opinion that it would be permissible for the State to contribute funds to be used for rapid transit purposes pursuant to a statute providing for State-wide subvention of rapid transit districts. There are several provisions of the California Constitution which must be considered in relation to the validity of such contributions, namely: article IV, sections 22 and 31, prohibiting gifts of public money; and article XI, section 12, prohibiting the State from imposing taxes for county, city, town or other municipal purposes, i.e., for local purposes. The constitutionality of contributions by the State to activities carried on by municipal corporations and by special districts has been presented to the California courts on a number of occasions and has generally been upheld on the ground that the funds which were to be used were for a State-wide purpose rather than for a local purpose. Thus, in *Bacon Service Corp.* v. *Huss*, 199 Cal. 21, the court upheld an act imposing a State license tax on contract motor carriers, providing for the appropriation of half of the tax so collected to the State Treasury and the appropriation of the other half to the counties to be devoted exclusively to the maintenance and repair of public highways within the county, on the ground that the purpose of the appropriation was State-wide and not local. The court in the *Huss* case also relied on section 26 of article IV of the State Constitution authorizing the Legislature to extend aid for the construction and maintenance in whole or in part of any county highway. In *City of Los Angeles* v. *Riley*, 6 Cal. 2d 621, the court upheld appropriation of a portion of the motor vehicle license tax imposed by the State for use by cities for law enforcement and the regulation and control and fire protection of highway traffic on the ground that such activities were for State purposes. In *City of Los Angeles* v. *Post War etc. Board,* 26 Cal 2d 101, the court upheld State appropriations for local construction projects on the ground that a State purpose was served thereby, namely: combating postwar unemployment.

An appropriation by the State for a State purpose, therefore, does not violate the provisions of the California Constitution since it is neither a gift of public

money within the meaning of article IV, sections 22 and 31, nor is it a tax imposed for a local purpose within the prohibition of article XI, section 12.

Applying these principles to the facts here involved, it seems apparent that the development of rapid transit is a State-wide purpose within the meaning of the cases discussed above. Certainly, the development of rapid transit in the Bay Area is important to the interests of the whole State in the same manner as the development and repair of highways within a county is of State-wide concern (*Bacon Service Corporation* v. *Huss,* 199 Cal. 21; *Golden Gate Bridge etc. District* v. *Felt,* 214 Cal. 308, 321). The cases discussed above establish the validity of a State-wide scheme for the subvention of activities of a district which promote a State purpose. If the subvention of rapid transit districts is carried out under a State-wide scheme for the subvention of such districts, it is our opinion that its validity would be upheld. An appropriation for such purpose could be made either from general funds or from a State tax specifically imposed for this purpose.

2(d). Can the State apply bridge toll revenues to rapid transit purposes?

It does not appear that the revenues arising from tolls collected on any toll bridge in this State could be used for rapid transit purposes so long as the toll bridge has any outstanding bonded indebtedness. Any diversion of toll revenues of bridges constructed under the California Toll Bridge Authority Act to rapid transit districts would, under such circumstances, be violative of section 30236 of the Streets and Highways Code, which provides as follows:

> "The bond redemption and interest payments constitute a first direct and exclusive charge and lien on all tolls and other revenues, and interest thereon, and sinking funds created therefrom received from the use and operation of the particular toll bridge or other highway crossing. Such tolls and revenues together with the interest earned thereon constitute a trust fund for the security and payment of the bonds and shall not be used or pledged for any other purpose as long as any such bonds are outstanding and unpaid."

Moreover, section 27300 of the Streets and Highways Code contains similar restrictions on the use of tolls collected under the Bridge and Highway District Act (Sts. & Hy. Code secs. 27000, *et seq.*). In addition, any use of toll revenues which was violative of the contractual rights of the bondholders would also be prohibited by the "impairment of contracts clause" of the United States Constitution (art. I, sec. 10).

On the other hand, in the event that there are no outstanding bonds secured by the revenue from a particular bridge, and the revenues of the toll bridge are not committed to secure other bonds or contractual obligations, it is our conclusion, in the absence of specific statutory provisions to the contrary, that such toll revenues could be used for rapid transit purposes.

With respect to the use of tolls from the San Francisco-Oakland Bay Bridge, however, it is also necessary to consider the restrictions on the amount and use of bridge tolls which are imposed by the federal permissive statute by which Congress consented to the construction of that bridge and the crossing of the federal

reservation on Goat Island. This federal statute titled "An Act Granting the consent of Congress to the State of California to construct, maintain, and operate a bridge across the Bay of San Francisco from the Rincon Hill district in San Francisco by way of Goat Island to Oakland" was passed in 1931 (46 Stats. 1192) and was amended in 1953 (67 Stats. 202). This statute provides that the tolls from the San Francisco-Oakland Bay Bridge must be used either for the operation, maintenance and repair of the present bridge, and the retirement of its indebtedness, or for the construction, operation, maintenance and financing of not to exceed two additional highway crossings across the San Francisco Bay. Unless this federal statute is amended, tolls from the San Francisco-Oakland Bay Bridge would not be available for use by the rapid transit district.

In addition, it is to be noted that the tolls from the San Francisco-Oakland Bay Bridge are to be committed as security for bonds for the so-called "Southern Crossing" of the San Francisco Bay (Sts. & Hy. Code secs. 30605, 30608 and 30656). Even though no bonds for the "Southern Crossing" are outstanding, it would appear necessary to amend the statutory provisions referred to above before revenues from tolls collected on the San Francisco-Oakland Bay Bridge may be applied for rapid transit.

2(e). Can the transfer of title to the San Francisco Bay Bridge be made to the transit district by means of the district statute?

It is our view that a "transfer of title" to a bridge could be made to the rapid transit district by means of the district statute so long as such transfer did not impair the security for any outstanding bonded indebtedness pledged to be paid out of toll revenues of such bridge. It is our understanding that at the present time all of the bonds of the San Francisco-Oakland Bay Bridge have been retired. Under such circumstances, it would not appear that prohibitions against impairment of contracts would be an impediment to the transfer of the San Francisco-Oakland Bay Bridge to the rapid transit district.

It is our opinion, moreover, that a "transfer of title" to the rapid transit district would merely constitute a change in the management of the bridge. In 5 Ops. Cal. Atty. Gen. 158, there is a detailed discussion of the nature of the respective interests of the Golden Gate Bridge District and of the State of California in the Golden Gate Bridge. It is there pointed out that it is established by decisions of the California Supreme Court that a district of this kind has no proprietary interest in its physical properties as against the State. It is our view that in like manner a transfer to the rapid transit district of the title to the San Francisco-Oakland Bay Bridge would not create any proprietary interest in the district in the physical properties of the bridge as against the State of California. Such a transfer would, of course, permit a change in the management of the affairs of the bridge to coordinate its operations with the other functions performed by the rapid transit district.

3(a). To what extent are the amounts and terms of bonds and of taxes to service bonds of the district limited by existing law or city or county charter provisions?

We have contacted the nine counties mentioned in the San Francisco Bay Area Metropolitan Rapid Transit District Act (Calif. Stats. 1949, ch. 1239) and have been advised by those who answered that their respective charter provisions would not conflict with district-type legislation authorizing the issuance of bonds and the imposition of taxes to maintain and operate the facilities of the district and to meet bond requirements. The constitutional debt limit (Calif. Const., article XVI, sec. 1) does not apply to public utility districts created pursuant to State law (*cf., Pattison* v. *Board of Supervisors,* 13 Cal. 175, 183-189; *California Toll Bridge Authority* v. *Wentworth,* 212 Cal. 298, 308; 20 Ops. Cal. Atty. Gen. 95). Other than noted hereinbelow, there does not appear to be any existing State law which would limit the amount and terms of the bonds which might be issued by a rapid transit district or the amount of taxes to service such bonds. Of course, certain limitations might be included in the statute authorizing the formation of the district. In 20 Ops. Cal. Atty. Gen. 95, this office concluded that while a county water district may lawfully incur a debt which is not subject to constitutional debt limit (Calif. Const., art. XVI, sec. 1), nevertheless it is probable that the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (Sts. & Hy. Code secs. 2800-3012) would apply. The debt limitations under that statute are set forth in sections 2900-2905 of the Streets and Highways Code. The aforementioned opinion (20 Ops. Cal. Atty. Gen. 95) is applicable here. However, the statute authorizing the creation of a rapid transit district could provide for the exclusion of the district from the operation of the Special Assessment Investigation, Limitation and Majority Protest Act of 1931.

3(b). Can the financial burdens of the transit system be allocated to cities or counties within the district on a differential basis specified in the district statute, without separate vote of the communities affected?

Our answer to this question is in the affirmative. The Legislature, in establishing a special district, may provide for an allocation of costs among the political subdivisions comprising the district in a manner producing differing tax rates in these political subdivisions if the allocation is reasonable. An example of allocation of tax burdens on a differential basis is found in section 24370.1 of the Health and Safety Code relating to the Bay Area Air Pollution Control District. Section 24370.1 provides as follows:

> "Before the fifteenth day of June of each year the board shall estimate and determine the amount of money required by the district for purposes of the district during the ensuing fiscal year and shall apportion this amount to the counties included within the district, one-half according to the relative value of the real estate of each county within the district as determined by the board and one-half in the proportion that the population of each county bears to the total population of the district. For the purposes of this section the board shall base its determination of the population of the several counties on the latest official information available to it. The total amount of money required by the district for district purposes during any one fiscal year shall not exceed

one cent ($0.01) on each one hundred dollars ($100) of the assessed valuation of all the property included within the district."

It is provided in section 24350.2 of the Health and Safety Code, that the Bay Area Air Pollution District is to transact business and exercise its powers and functions in the counties of Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara on the effective date of the enactment of the Bay Area Air Pollution Law without any vote or resolution by such counties on the matter. There is also a provision for the exercise of the functions of the district in one or more additional counties designated in the statute upon the filing of a petition by ten percent of the qualified electors of the county which is acted upon favorably by the board of supervisors of the county (Health & Saf. Code secs. 24350.3, *et seq.*).

Moreover, the allocation of the tax burden of a Joint Highway District between Alameda County and Contra Costa County on the basis of the payment by Alameda County of 90% of the costs and the payment by Contra Costa County of 10% of the costs was upheld in *Joint Highway District No. 13* v. *Hinman,* 220 Cal. 578. In the *Hinman* case, it was contended that the allocation of costs between the two counties was violative of constitutional provisions because the levy was not spread over the entire district at a uniform rate. The court recognized that the tax rate would not be the same in each county. After reviewing the decision of the United States Supreme Court in *Foster* v. *Pryor,* 189 U.S. 325, and decisions in other jurisdictions, the court held as follows:

> "We are of the view that the Joint Highway District Act does not violate the due process provision of the federal Constitution in providing for the organization of the District and the method of levying and collecting the tax. The legislature had full power over the subject matter of the formation of the District. It delegated this power to the boards of supervisors of the respective counties comprising the District. The construction of the proposed highway is a matter in which the whole community has an interest, and is a typical public purpose for which property may be taxed by the state. Questions relating to spreading the tax are matters which rest in the discretion of the state, and are not controlled by either the due process or the equal protection clause of the fourteenth amendment. (*Memphis etc. Ry. Co.* v. *Pace,* 282 U.S. 241 [51 Sup. Ct. 108, 75 L. Ed. 315, 72 A.L.R. 1096].) If the tax can at any time be shown to be palpably arbitrary, thereby amounting to a clear abuse of power, it will fall under the condemnation of the due process clause. Where the difference between the different portions of territory is plain and palpable, the right of the legislature to recognize that difference and to provide for a difference in taxation cannot be denied without imposing restraints upon the constitutional power of the legislature, which cannot in reason be justified. Whether there is such a difference would generally be for the legislature to determine, although it cannot

be said that the courts could not, in any possible state of facts, review that determination. (*Foster v. Pryor, supra,* at p. 334.)"

It is apparent from the decision in *Joint Highway District No. 13* v. *Hinman, supra,* that the Legislature has considerable leeway in allocating costs among the various political subdivisions constituting the district, providing there is some reasonable basis for such differentiation in the tax rates. In like manner, a difference in the tax rate imposed by the rapid transit district in the cities or counties composing the district would be upheld if it were not palpably arbitrary.

EXHIBIT VI

ATTORNEY GENERAL OPINION NO. 65-283 DATED JANUARY 27, 1966

Opinion No. 65-283—January 27, 1966

SUBJECT: SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT—The imposition by a rapid transit district of a motor vehicle fuel license tax or use fuel excise tax for the purpose of financing a rapid transit system is prohibited by the California Constitution.

Requested by: ASSEMBLYMAN, 41st DISTRICT; ASSEMBLYMAN, 50th DISTRICT

Opinion by: THOMAS C. LYNCH, Attorney General
Paul M. Joseph, Deputy

Two requests have been made for opinions concerning the financing of the development of rapid transit facilities in Los Angeles County by the Southern California Rapid Transit District as follows:

The Honorable Tom Carrell, Assemblyman, Forty-First District, has requested an opinion on the following question:

1. Is the Legislature prohibited by article XXVI of the California Constitution from enacting legislation authorizing the district to adopt, with the approval of the voters in the district, an ordinance levying a motor vehicle fuel license and use fuel excise tax in the area encompassed by the district, the revenues of which are to be used by the district to finance a mass rapid transit system?

The Honorable Philip L. Soto, Assemblyman, Fiftieth District, has requested an opinion on the following question:

2. Can the Legislature exempt the district from the provisions of the Use Fuel Tax Law, either directly or by means of refunds?

The conclusions are:

1. By article XXVI of the Constitution, the State has preempted the field of motor vehicle fuel license and use fuel excise taxation; proceeds of such taxes may only be used exclusively and directly for the public street and highway purposes set forth in article XXVI; the development and operation of a rapid transit system is not among such purposes. Since the development and operation may be a statewide purpose, the district would be acting as an agent of the State in imposing a tax for a purpose prohibited by the Constitution.

2. Exemption of the district from the Use Fuel Tax, either directly or by way of provision for refunds, while imposing the tax on all other transit districts would probably be said to violate constitutional prohibitions against special legislation. It is probable that a court would decide that a statute exempting the district in question from the provisions of the Use Fuel Tax Law is unconstitutional.

ANALYSIS

The Southern California Rapid Transit District is established and operates under sections 30000-31520 of the Public Utilities Code. Its territory comprises the more populous parts of Los Angeles County, having within its limits in excess of five million inhabitants. It has taken over the transportation system of the Los Angeles Metropolitan Transit Authority and is now operating that entity's rapid transit facilities. In the future it plans to have a transportation system in Los Angeles County consisting of passenger buses operating on public streets and roads in the outlying parts of its territory, with fixed rail vehicles transporting passengers in the central part of the Los Angeles urban area.

In establishing transit districts, it is usual to authorize the levy of taxes on property within the district, limited in amount to five cents[1] or ten cents[2] per one hundred dollars of assessed value of taxable property within the district. This tax revenue may be used "for any lawful purpose" under the standard wording of the transit district statutes. This includes payment of preliminary and planning expenses, costs of operation, maintenance and bond service.[3]

The Southern California Rapid Transit District's authority to levy property taxes is severely limited. Although taxes may be levied to pay principal and interest on general obligation bonds of the district, if the revenues of the district are expected

[1] E.g., San Francisco Bay Area Rapid Transit District, Pub. Util. Code §§ 29120, 29123; Orange County Transit District, Pub. Util. Code § 40210.

[2] E.g., Stockton Metropolitan Transit District, Pub. Util. Code § 50210; Fresno Metropolitan Transit District, Stats. 1961, ch. 1932, §§ 3.16, 6.55.

[3] The West Bay Rapid Transit Authority (San Mateo County) is authorized to levy a special property tax not to exceed one cent for each one hundred dollars of assessed valuation "to pay the preliminary expenses of the authority, including but not limited to the preparation of the master plan" for the district. Stats. 1964, 1st Ex. Sess. ch. 104, § 6.53.

to be inadequate to pay such interest and principal (Pub. Util. Code §§ 30800-30804), "no taxes of any kind or nature whatever shall be levied to pay operating expenses of the district and/or to provide for repairs, maintenance and depreciation of works owned or operated by the district." Pub. Util. Code § 30806. District property taxes for other purposes must be authorized by a majority vote of the electorate of the district. Pub. Util. Code § 30806.

Because of the restrictions on its property taxing power, the district is searching for other taxes to impose to finance interim or preliminary expenses and planning costs for its contemplated transit system to supplement the present motor bus facilities.

Article XXVI, section 1, of the California Constitution provides, with certain exceptions enumerated in section 4 of the article, that the proceeds of any motor vehicle fuel taxes "imposed by the State" on the manufacture, sale, distribution, or use of motor vehicle fuel in motor vehicles operated on public streets and highways within the State shall be used "exclusively and directly for highway purposes" as defined in the section. Such highway uses are the construction, improvement, repair and maintenance of public streets and highways in both incorporated and unincorporated territory, the payment for property taken or damaged for such purposes, the administration costs necessarily incurred in carrying out such purposes and the payment of sums due under certain designated bonds.

The first question has been largely answered in 27 Ops. Cal. Atty. Gen. 15, 20 (1956). The question there was whether vehicle license fees or taxes on motor fuel might be levied within the territory of the San Francisco Bay Area Rapid Transit District (Pub. Util. Code §§ 28500-29757) to provide funds for the transit system of the district. Since the primary function of the rapid transit district was to create facilities for the mass transportation of passengers and since the district was not directly concerned with the development of improved facilities for the use of highway traffic, it was said that the activities of the district did not fall directly within the exclusive street and highway purposes mentioned in section 1 of article XXVI of the Constitution. Therefore, it was concluded that the State might not directly impose vehicle license fees or taxes on motor vehicle fuel to finance the activities of the rapid transit district.

With respect to a State statute authorizing such taxes to be levied directly by the district, it was said as follows:

> "It is uncertain whether a tax levied by the rapid transit district itself on motor vehicle fuel or motor vehicle registration or license fees would be regarded as a tax 'imposed by the State' in violation of article XXVI. In *Golden Gate Bridge etc. District* v. *Felt*, 214 Cal. 308, it is indicated that a bridge district may be regarded as being organized for State purposes. There is, therefore, a definite possibility that the courts would con-

clude that a rapid transit district is to be regarded as a State agency for purposes of article XXVI and that the prohibitions contained therein would apply to such a district. If the court concluded that a tax levied by a rapid transit district was a tax 'imposed by the State,' the prohibition contained in article XXVI would invalidate such a tax. Since this matter is not free from doubt, it would appear undesirable to make the financial structure of the rapid transit district depend on a type of tax which might be declared invalid at some future time." 27 Ops. Cal. Atty. Gen. 15, 20 (1956).

The same considerations apply to the suggestion that the Southern California Rapid Transit District levy a motor vehicle fuel license and use fuel excise tax in the area encompassed by the district pursuant to legislation authorizing such taxes.

Furthermore, the purpose of section 1 of article XXVI of the Constitution, generally understood at the time and as expressed in the ballot arguments submitted to the voters prior to the November, 1938, General Election, during which the constitutional provision was adopted, was to effectively and permanently prevent diversion of gasoline tax funds to uses other than those then provided by law, namely, the street and highway purposes set forth in section 1 of article XXVI. To broaden the definition of such purposes to include defraying the costs of a rapid transit system would not be a direct or exclusive expenditure of money for such street and highway purposes as required by the constitutional provision.

Article XXVI contemplates that the State will continue to levy fuel taxes. Section 3 of the article provides that the Legislature shall have power to appropriate the proceeds of such taxes and to provide the manner of their expenditure by the State, counties and cities for the purposes specified and to enact legislation not in conflict with the article. Such legislation appears in the Streets and Highways Code, sections 7301-8404. Section 1 of the article refers to construction, improvement, repairs and maintenance of streets and highways whether in incorporated or unincorporated territory, indicating that the proceeds of the taxes were to be used in cities as well as outside of incorporated areas. Certain exceptions in section 4 of the article refer to revenues from what is now the Vehicle License Fee Law (Rev. & Tax. Code §§ 10701-11005.6) being distributed to counties and cities. An elaborate plan for the apportionment of tax money among counties and cities has been enacted in the Streets and Highways Code, section 186.1 *et seq.* All this shows the intention of the Legislature in proposing article XXVI, and of the electorate in approving it, that the taxes subject to the article shall be imposed directly by the State of California and apportioned to cities and counties. By article XXVI, the field of vehicle fuel tax, with the possible exceptions mentioned in section 4 of the article, has been preempted by the State. See *In re Lane,* 58 Cal. 2d 99, 102 (1962). No doubt the plan was set up in this manner to prevent

the State from abrogating its role in collecting the motor vehicle fuel taxes by leaving it to the local entities to impose the taxes and to permit them to use the proceeds for purposes other than public streets and highways.

It is therefore concluded that article XXVI of the California Constitution prohibits the imposition by a rapid transit district of a motor vehicle fuel license tax or use fuel excise tax for the purpose of financing a rapid transit system, even if pursuant to legislative authorization for the imposition of such a tax.

The second question involves the proposal to exempt the district from the Use Fuel Tax Law (codified as Revenue and Taxation Code §§ 8601-9355), which provides for the so-called "diesel tax," either directly or by provision for refund. This is an excise tax (Rev. & Tax. Code § 8651) imposed on the user or consumer, including public districts and other public entities (Rev. & Tax. Code §§ 8606, 8607, 8651), for the use of fuel to propel motor vehicles on highways within this State, except fuel taxed under the "Gas Tax Law," Motor Vehicle Fuel License Tax Law. Rev. & Tax. Code §§ 7301-8403. The diesel tax applies almost exclusively to the use of diesel fuel in vehicles on highways. The diesel tax is imposed directly on the consumer for the use of the fuel, unlike the gas tax which is imposed on the distributor for the privilege of selling the fuel. Rev. & Tax. Code § 7351. The proceeds of this tax are subject to the provisions of section 1 of article XXVI of the Constitution.

The power to tax includes the power to exempt certain persons or things from the tax so long as constitutional prohibitions are not violated. *San Francisco* v. *McGovern,* 28 Cal. App. 491, 512 (1915). Legislative power to exempt from taxation extends to property taxes, special assessments and other forms of imposts. *Los Angeles C. F. C. Dist.* v. *Hamilton,* 177 Cal. 119, 130 (1917).

Article XXVI, section 1, of the Constitution, does not require that all motor vehicle fuel manufactured, sold, distributed or used must be taxed, but merely provides that if any taxes are imposed by the State the proceeds must be used for the designated streets and highways purposes. The Legislature in enacting legislation for such taxes may make the taxes as broad as it deems wise or convenient so long as constitutional restrictions are observed.

In all probability, several constitutional provisions would be construed by a court to prohibit the exemption of one rapid transit district from the provisions of the Use Fuel Tax Law, while subjecting other rapid transit districts to its provisions. However, the decision would depend upon whether or not there were any factual differentiations the Legislature could reasonably and fairly recognize between the situation in the exempted district and other districts. *County of L. A.* v. *Southern Cal. Tel. Co.,* 32 Cal. 2d 378, 389-390 (1948). It is immaterial whether the tax benefit is given by reason of direct exemption or by provision for refunds.

Article IV, section 25, of the Constitution prohibits special or local legislation of certain specified types and in any situation where a general law can be made applicable. Subdivision 20, of section 25, prohibits the Legislature from passing any special or local law exempting property from taxation. The section further expressly prohibits special or local laws for the collection of taxes (subd. 10) and for refunding of money paid into the State treasury (subd. 15).

Article I, section 11, of the Constitution provides that all laws of a general nature shall have a uniform application. Likewise, the Fourteenth Amendment to the United States Constitution prohibits any state from denying to any person within its jurisdiction the equal protection of the laws. The courts consider the prohibition in the State Constitution against the enactment of special legislation substantially the same as the prohibition against denial of equal protection of the laws in the Fourteenth Amendment to the United States Constitution. *County of L. A.* v. *Southern Cal. Tel. Co.,* 32 Cal. 2d 378, 389 (1948).

The Legislature in enacting statutes may classify provided the persons or things within the classification are treated with equality and the classification is based upon differences having a substantial relation to the objects of the legislation. If this is done the constitutional prohibitions referred to above are not violated. *Barker Bros., Inc.* v. *Los Angeles,* 10 Cal. 2d 603, 607 (1938). The power of the Legislature to make classifications of persons or property for the purpose of taxation is broad. *Roth Drug, Inc.* v. *Johnson,* 13 Cal. App. 2d 720, 733 (1936).

Disregarding publicly owned transit systems operated under city charters, such operation may be carried on by an entity formed as a public utility district under The Public Utility District Act (Pub. Util. Code §§ 15501-17501), under the Municipal Utility District Act (Pub. Util. Code §§ 11501-14401), by a district formed under special statutes comprising sections 24501-97100 of the Public Utilities Code, or under certain uncodified statutes, e.g., The Fresno Metropolitan Transit District Act of 1961, enacted by Statutes of 1961, chapter 1932. Some of the statutes provide for the formation of "rapid transit districts" while others denominate the entity merely as a transit district. Each law provides for the formation of the district in a specified county or area. These laws in general are similar but have significant individual differences. They operate in areas differing in physical characteristics and population. Most of these statutes have a legislative finding as to the unique character of the district prompting the enactment of a special statute. E.g., Pub. Util. Code §§ 24561, 28502. Such a finding appears in the statute creating the district in question. Pub. Util. Code § 30001. For these reasons it has been concluded by this office that the formation of transit districts by special law does not contravene the provisions of article IV, section 25, of the California Constitution prohibiting special legislation in certain situations. 30 Ops. Cal. Atty. Gen. 37, 41-42 (1957); 27 Ops. Cal. Atty. Gen. 15, 17-18 (1956).

See *In re Madera Irrigation District,* 92 Cal. 296, 308 (1891); *Alameda, etc., Water Dist.* v. *Stanley,* 121 Cal. App. 2d 308, 314-315 (1953).

Although transit districts may be formed under a law applying to the particular district alone, it does not necessarily follow that one district alone may be exempted from a particular tax. However, if there is any basis upon which the Legislature might conclude that one transit district differed from others in a manner making it necessary, practicable, or convenient to exempt the particular entity from a tax while imposing the same tax on all other transit districts, then a court would not interfere with the classification so made. *Blumenthal* v. *Board of Medical Examiners,* 57 Cal. 2d 228, 233 (1962).

Several general distinctions (aside from population and geographical differences) have been called to our attention which are asserted to set the Southern California Rapid Transit District apart from all other transit districts or publicly owned transportation facilities in this State. One of the distinctions urged is that the district in question now operates almost entirely with vehicles using diesel fuel on public streets and highways and in the future contemplates that a major part of its vehicles will consume diesel fuel in operating on public streets and highways, while other transit districts either do not use, or do not intend to use, diesel fuel vehicles on public streets and highways or do not or will not make use of such vehicles on public streets and highways to the extent that the Southern California District does or intends to do. But this assertion does not stand up under investigation. Other transit districts use diesel consuming vehicles on public roads or streets in the transportation of passengers either exclusively or in major part.

Another asserted distinction is that some, if not most, of the transit districts may levy a property tax up to a maximum amount, usually five cents per one hundred dollars of assessed valuation of all real and personal property in the district, to be used for general district purposes, e.g., San Francisco Bay Area Rapid Transit District (Pub. Util. Code §§ 29120-29123); Stockton Metropolitan Transit District (Pub. Util. Code § 50210). Contrasted to this more or less general authority to levy property taxes for district purposes is the situation with the Southern California Rapid Transit District which may tax only for purposes of paying principal or interest on district general obligation bonds in cases where revenue from the activities of the district are insufficient to pay such interest or principal. Pub. Util. Code §§ 30800-30812.

If the district is exempted from the diesel tax, money will not be directly realized for use in defraying interim or preliminary expenses for the contemplated expanded facilities and equipment. Operating expenses will be reduced in proportion to the amount of diesel tax unpaid. Before such saving may be used in the contemplated preliminary financing, other funds of the district, or funds from other sources, must be applied to such expenses. Thus, the exemption seems to have but a remote connection with the peculiar taxing authority of the district. It is doubtful that a court would say that, with respect to the proposed tax exemption

in question, the curtailed power of the district to levy property taxes is a sufficient basis for classification to avoid the objections of special legislation, equal protection of the laws or similar contentions.

Another distinction between the district in question and other transit districts is a restriction in the type of its activities. By defining "transit" broadly to include any type of transportation of passengers and their incidental baggage (e.g., Pub. Util. Code §§ 24505, 28505, 50005), most other transit districts may engage in furnishing chartered bus and sight-seeing bus services. The Southern California Rapid Transit District may not engage in these services. Pub. Util. Code § 30005. This restriction on the district's revenue-producing activities has been urged as a basis for different classification under which an exemption from the diesel fuel tax may be justified. As with the difference in taxing power, a tax exemption would be far removed from this asserted ground for the exemption. Furthermore, an identical restriction in activities is imposed upon the Orange County Transit District. Pub. Util. Code § 40005.

Size or population differences between rapid transit districts, whether formed and operated under general or special laws, would not serve as a basis for exempting only one such district from the diesel fuel tax. Other districts operate in territory as flat—or as hilly—as the territory of the Southern California Rapid Transit District. Other districts operate in densely populated areas having great mass transportation needs.

It is urged that while any one of the differences mentioned might not be sufficient to classify the district in question in a special manner with respect to exemption from diesel fuel taxes, the sum of all the differences is a sufficient basis for the Legislature to determine that this one district should not pay the tax.

In approaching the question, the courts generally will recognize any state of facts that reasonably can be conceived that would sustain the classification and the burden of showing arbitrary action rests upon the one assailing the classification. *People* v. *Western Fruit Growers,* 22 Cal. 2d 494, 506 (1943). Still, it appears that the policy set forth in article XXVI of the Constitution that moneys raised by taxes on motor vehicle fuel shall be used exclusively and directly for road purposes is so strong as to preclude exemption classification on the basis of the differences mentioned above.

It is concluded that whether in the form of an exemption or provision for a refund, a statute under which the Southern California Rapid Transit District alone would not be required to pay the tax imposed under the Use Fuel Tax Law in all probability would be declared to be special legislation in violation of constitutional prohibitions.

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